

In The Matter of:
Ronald M. Lisan, M.D.
VS
Robert Wilke, etc.

Susan M. Fuehrer (Vol II)

April 26, 2019

Deposition



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1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF OHIO - EASTERN DIVISION

3 RONALD M. LISAN, M.D.,

4 Plaintiff, JUDGE PATRICIA A. GAUGHAN
5 -vs- CASE NO. 1:18-CV-00969

6 ROBERT WILKE, ACTING SECRETARY
7 OF THE UNITED STATES DEPARTMENT
OF VETERANS AFFAIRS,

Continued deposition of SUSAN M. FUEHRER,
taken as if upon cross-examination before Pamela
S. Greenfield, a Certified Realtime Reporter,
Registered Diplomate Reporter and Notary Public
within and for the State of Ohio, at the offices
of Sindell & Sindell, LLP, 23611 Chagrin
Boulevard, Suite 227, Beachwood, Ohio, at 1:35
p.m. on Friday, April 26, 2019, pursuant to
notice and/or stipulations of counsel, on behalf
of the Plaintiff in this cause.

MEHLER & HAGESTROM

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1 APPEARANCES:

2 Steven A. Sindell, Esq.
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6 On behalf of the Plaintiff;

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13 On behalf of the Defendant.

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1 W I T N E S S I N D E X

2 PAGE

3 CONTINUED CROSS-EXAMINATION

4 SUSAN M. FUEHRER

5 BY MR. SINDELL

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6 E X H I B I T I N D E X

7 EXHIBIT PAGE

8 Plaintiff's Exhibit 76, Fuehrer
4/2/19 deposition excerpt 1079 Plaintiff's Exhibit 77, Bearss 4/5/19
deposition excerpt 13210 Plaintiff's Exhibit 78, 6/20/17
Fuehrer letter to Lisan 18311 Plaintiff's Exhibit 79, "Response of
Dr. Ron Lisan to the Proposed
Suspension at the Request of Dr.
Raphaely (5-10-17)" 20212 Plaintiff's Exhibit 80, 3/20/17
Raphaely letter to Lisan 20713 Plaintiff's Exhibit 81, 6/15/17
Metzger letter to Sindell 224

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1 SUSAN M. FUEHRER, of lawful age, called by
2 the Plaintiff for the purpose of
3 cross-examination, as provided by the Rules of
4 Civil Procedure, being by me first duly sworn, as
5 hereinafter certified, deposed and said as
6 follows:

7 CONTINUED CROSS-EXAMINATION OF SUSAN M. FUEHRER
8 BY MR. SINDELL:

9 Q. We've already gone through the process of a
10 deposition and that we don't want to interrupt
11 each other if we can avoid it. You have to use a
12 full word to answer a question and if you don't
13 understand a question, rather than answer it, ask
14 me to explain it. I'll be happy to do that.

15 A. I understand.

16 Q. Right. I just wanted to make sure that we're in
17 the same ballpark and of course you continue to
18 be under oath. I know you know that.

19 A. Yes.

20 Q. I guess we'd better mark this because it's new
21 stuff.

22 - - - -

23 (Thereupon, Plaintiff's Exhibit 76, Fuehrer
24 4/2/19 deposition excerpt, was marked for
25 purposes of identification.)

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2 Q. There are just a couple things here from your
3 prior deposition that I wanted to clarify with
4 you, and that's what this is. These are a couple
5 of transcript pages from your previous deposition
6 that we had. Okay? So you know what I'm talking
7 about.

8 A. Okay.

9 Q. This is Exhibit 76. It's two pages of the
10 transcript of your previous deposition. I forget
11 the date, but whenever it was.

12 But I want to focus on the first page of it,
13 on Page 80, do you see where it says that? Lower
14 right corner?

15 A. Yes.

16 Q. And toward the bottom, Line 22, do you see that?

17 A. Yes.

18 Q. And I'll just read it for the record.

19 "Do you intend to take any further action in
20 that regard or don't you know?"

21 Do you understand "in that regard," it was
22 bringing up the context of fear of retaliation by
23 Ms. Costanzo and I asked you if you found it
24 disturbing to you and you said yes?

25 You're free to read that portion if you want

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1 just to get the context.

2 A. I'm sorry, I can't remember.

3 Q. That's okay. Go ahead and, you know, I want you
4 to get the gist of it.

5 A. Okay.

6 Q. Are you with me?

7 A. Yes.

8 Q. So at Line 22, question: "Do you intend to take
9 any further action in that regard or don't you
10 know?"

11 And you said, "I will have to consult with
12 attorneys because I don't -- I have not had --
13 this is the first time I've seen this. I don't
14 know the context. I don't know where we're at,
15 so I would need to talk to somebody."

16 Question: "You'd need to investigate
17 further?"

18 Answer: "Yes."

19 Right?

20 A. Correct.

21 Q. Now, who would you talk to? That's what I didn't
22 follow up with and I would like to understand
23 when you say "I'd have to talk to somebody, I'd
24 have to investigate further," who do you talk to?

25 A. So I received a snippet of a testimony, one

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1 person's testimony. I didn't have the
2 opportunity to read the entire --

3 Q. I'm not asking --

4 A. -- testimony. Please let me finish.

5 Q. Okay. But I want you to answer my question.

6 A. And I will.

7 So when it is appropriate that I can read all
8 the testimony and read it in context, I will then
9 determine whether or not appropriate action needs
10 to be taken further.

11 Q. Okay. So let's say that you want to discuss it
12 with somebody about further investigation. Who
13 would you go to?

14 A. The Office of General Counsel.

15 Q. Okay. Now, the Office of General Counsel is not
16 a person. It's an office. And I assume there
17 are people that work in the Office of General
18 Counsel; is that correct?

19 A. Correct.

20 Q. Where is the Office of General Counsel?

21 A. Well, there are several. The main office is in
22 Akron, Ohio.

23 Q. Is that where you would go?

24 A. Well, I would probably send an email or have a
25 conference call to initiate, yes.

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1 Q. You'd have contact with the Office of General
2 Counsel?

3 A. Yes.

4 Q. In Akron?

5 A. Yes.

6 Q. Who's the head of that office?

7 A. Dennis McGuier, M-C-G-U-I-E-R, and he is an
8 attorney.

9 Q. I would think so. And is that the person that
10 you would most likely contact directly or is
11 there somebody else who's more of an executive
12 function there or something?

13 A. Dennis is the executive.

14 Q. Is that who you would generally go to?

15 A. Yes.

16 Q. Is there any other office that you would contact
17 besides Mr. McGuier at the general counsel office
18 in Akron?

19 A. It would probably, I would also include employee
20 labor relations at the hospital.

21 Q. Is there somebody there who you would generally
22 contact?

23 A. The section chief is Steve Savino. S-A-V-I-N-O.

24 Q. I assume that you have a superior?

25 A. Yes.

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1 **Q. To whom do you report?**

2 A. Well, when we met the last time, I let you know
3 that it was Denise Deitzen. D-E-I-T-Z-E-N.

4 **Q. D-E-I-T?**

5 A. Z-E-N.

6 **Q. Boy, I don't remember that but if you do, I
7 believe you.**

8 A. I thought you asked me. Well, maybe I'm --

9 **Q. That doesn't help me.**

10 A. Usually people ask me who I report to.

11 **Q. Well, see, I didn't finish my deposition so...
12 What's the first name, Denise?**

13 A. Denise. D-E-N-I-S-E.

14 **Q. What is her title?**

15 A. So her title was acting network director.

16 **Q. Where is her office? In the VA here?**

17 A. In Cincinnati and in Ann Arbor. There are two
18 offices.

19 **Q. Acting network what?**

20 A. Director serving the states of Ohio, Michigan and
21 Indiana.

22 **Q. The states of Ohio, Michigan and Indiana and you
23 said Ann Arbor and where?**

24 A. Cincinnati.

25 **Q. Which office? Or doesn't it matter? That you**

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1 **would, where you would contact her?**

2 A. It doesn't matter. Whenever she happens to be.

3 However, she is no longer the acting network
4 director. We have a new acting director and his
5 name is Ron.

6 **Q. New acting network director?**

7 A. Network director, yes.

8 **Q. And his name is?**

9 A. Ronald Stertzbach, S-T -- it's easier if I write
10 it.

11 **Q. That's okay. As long as you tell me.**

12 A. S-T-E-R-T-Z-B-A-C-H.

13 **Q. Does he have a main office where he --**

14 A. He's mainly in Cincinnati. Denise was equal
15 distant between the two.

16 **Q. Now, when you say Cincinnati, is there a specific
17 office or is it a specific facility or however?**

18 A. There is an executive office suite for the VISN.

19 **Q. I guess what I'm asking is if I wanted to
20 communicate with Ronald Stertzbach or send him a
21 document -- I'm not saying I'm going to do that,
22 but I could. I mean it might be a subpoena, I
23 don't know -- where would that go? What's the
24 physical location?**

25 A. Do you need an address?

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1 Q. Yeah.

2 A. I don't know it.

3 Q. Would you know the street?

4 A. No. I know how to get there in my car. I can
5 try to Google if you'd like.

6 Q. Well, I don't need the driving directions.

7 A. No. I meant to try to find the --

8 Q. I'm kidding. Go ahead.

9 Is it a VA facility?

10 A. It's an executive office building.

11 Q. Of the VA? Or is it just a general office --

12 A. They lease space in an executive office building.

13 Q. Okay. Then I do want to know.

14 A. VISN office. It's technically --

15 Q. What is the office called?

16 A. The VISN office.

17 Q. The what office?

18 A. The VISN office.

19 Q. VISN?

20 A. V-I-S-N, Veterans Integrated Service Network and
21 the address is --

22 Q. Okay. Wait. Slow down. VISN, what is the V
23 for?

24 A. Veterans.

25 Q. Veterans?

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1 A. Integrated.

2 Q. **Integrated Service Network?**

3 A. Correct.

4 Q. **All right. Office. Okay. Sorry. Go ahead.**

5 **What's the address?**

6 A. 11500 Northlake Drive, all one word, Suite 200.

7 Q. **Suite 200?**

8 A. Cincinnati, Ohio, 45249.

9 Q. **45 what?**

10 A. 249. Want a phone number, too?

11 Q. **Shoot.**

12 A. 513-247-4621.

13 Q. **Does he live in Cincinnati, if you know?**

14 A. I have no idea where he lives.

15 Q. **Okay. Have you ever met him?**

16 A. Yeah.

17 Q. **Okay. Good.**

18 A. His brother worked for the canteen in Cleveland.

19 He's in Georgia now but I don't know where he
20 lives.

21 Q. **His brother is not of interest to me.**

22 **Now, just very generally can you tell me what**
23 **the network or the Veterans Integrated Service**
24 **Network actually is?**

25 A. Sure. So in our VISN, you understand VISN now,

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1 right? There are 11 facilities in the states of
2 Ohio, Indiana and Michigan.

3 Q. You mean like facilities like --

4 A. Like Cleveland.

5 Q. -- say like Louis Stokes?

6 A. Correct. So, you know, they're a health system
7 so there's one in Ann Arbor and one in Cincinnati
8 and Dayton and Columbus and so we are one of 11.
9 By far the biggest, but one of 11 and the VISN
10 office has a director and an operating officer of
11 very similar structure and they oversee a region
12 of VA hospitals and there are 23 networks across
13 the country, so our number is 10.

14 Q. Well, what is Ronald Stertzbach's responsibility?

15 I mean what does he do? What does he have
16 responsibility over exactly?

17 A. Well, sometimes I don't know, to be honest.
18 But they are a region and they act as
19 liaisons between the facilities and the folks in
20 Washington, D.C.

21 Q. I see. Is there anybody in Washington, D.C. that
22 you would contact about any problems directly?

23 A. No. Usually I go through the Office of General
24 Counsel or the VISN.

25 Q. Is Mr. Stertzbach an attorney?

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1 A. No. He's an engineer.

2 Q. When you say with Washington, D.C., with whom
3 does the network director liaison with in
4 Washington, D.C.?

5 MS. ASHER: Objection. Relevance.

6 Go ahead.

7 A. Many people but his, in his acting capacity, he
8 reports directly to another person who is acting
9 and her name is Renee O'Shinski.

10 Q. Renee. Is that a woman?

11 A. Yes.

12 Q. Two Es?

13 A. Yes.

14 Q. Renee what?

15 A. O'Shinski. O apostrophe S-H-I-N-S-K-I and she is
16 the acting, she's the acting DUSHOM. Which is
17 D-U-S-H-O-M and stands for deputy --

18 Q. Just a minute. S-H-O-M? DUSHOM?

19 A. Yes.

20 Q. And that's what now?

21 A. Deputy Under Secretary For Health and Operations.

22 Q. What's the M stand for?

23 A. Management.

24 Q. Is this somebody who reports to the secretary of
25 the VA?

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1 A. She reports to the under secretary for health who
2 reports to the secretary for the VA.

3 Q. **Have you ever met Ms. O'Shinski?**

4 A. Yes. Her day job is VISN director in VISN 12,
5 which is Chicago. She's just, I said she's
6 acting in Washington, so her permanent job --

7 Q. **Sounds like everybody's acting.**

8 A. Everybody is acting.

9 Q. **Except for you. You're not acting?**

10 A. Nope.

11 Q. **You're for real?**

12 A. Hopefully.

13 Q. **Have you had any reports, communications or**
14 **discussions with the acting network director,**
15 **whomever it might have been, at any time**
16 **regarding Dr. Raphaely or issues pertaining to**
17 **her?**

18 A. No.

19 MS. ASHER: Objection, but go
20 ahead.

21 A. Sorry. No.

22 Q. **Have you had any such discussions involving**
23 **Dr. Raphaely with Mr. McGuier?**

24 MS. ASHER: Objection. Go ahead.

25 A. No.

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1 Q. Could I ask why not?

2 MS. ASHER: Objection. Go ahead.

3 A. I've seen no need.

4 Q. We've talked about the Brenda Spicer report. You
5 read the whole thing while we were at your last
6 deposition?

7 A. Yes.

8 Q. Have you ever mentioned or discussed the Spicer
9 report or anything related to it with the network
10 director or with general counsel?

11 A. No.

12 Q. Why not?

13 MS. ASHER: Objection.

14 A. At this point I haven't seen a need.

15 Q. Any what?

16 A. I have not seen a need.

17 Q. Oh, a need. I'm sorry. I didn't properly hear
18 you. Okay. Apparently you mentioned --
19 withdrawn.

20 You also mentioned the, what did you call it,
21 the labor group or labor relations?

22 A. Employee labor relations.

23 Q. Thank you. I'm sorry. I didn't remember the
24 name. Labor relations. And I think you've told
25 us Steve Savino --

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1 A. Correct.

2 Q. -- is the section chief.

3 Has he been the section chief for the last
4 few years to your knowledge?

5 A. Yes.

6 Q. He's not acting?

7 A. No.

8 Q. Have you ever had any discussions in any way
9 related to the Brenda Spicer report with
10 Mr. Savino?

11 A. I may have. I can't recall specifically talking
12 specific to Steve, but I may have.

13 Q. How about in writing?

14 A. Nothing in writing to my knowledge.

15 Q. All right.

16 If you may have had discussions about the
17 Spicer report with him, when might that have been
18 approximately?

19 MS. ASHER: Objection. Go ahead.

20 A. After its release.

21 Q. Well, of course.

22 A. After I read it. I don't recall the exact date.

23 Q. I can't imagine you would have done it before you
24 read it. But okay.

25 Let's, it came out June 18, 2018.

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1 **If you would have discussed it with him,**
2 **would it have been within a relative period after**
3 **that date?**

4 A. Yes.

5 Q. **So within a month or so maybe?**

6 A. Yes.

7 Q. **Well, if you would have discussed it with him,**
8 **why would you have discussed it with him?**

9 MS. ASHER: Objection. Go ahead.

10 A. So we would have, when reports like this get
11 released, we -- and I don't recall one, to be
12 honest, so we might not have had one but we would
13 have perhaps EEO and employee relations and
14 myself sit down and discuss that.

15 Q. **Did I ask you, and I might or might not have,**
16 **where Mr. Savino is located?**

17 A. He's located at the medical center.

18 Q. **The VA here?**

19 A. Yes.

20 Q. **Why would you, if you didn't discuss it with him**
21 **and you can't recall that you did as you sit here**
22 **now, would it be for the same reasons you gave**
23 **regarding Mr. McGuier or the network director,**
24 **that there just didn't seem to be a need for it?**

25 MS. ASHER: Objection. Go ahead.

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1 A. Correct.

2 Q. So let me just ask you this: Would it be fair to
3 say that as you sit here now, you didn't feel
4 compelled to discuss with Mr. Savino the Brenda
5 Spicer report even though you might have
6 discussed it at some point?

7 MS. ASHER: Objection. Go ahead.

8 A. Yes.

9 Q. That's a correct statement?

10 A. Yes.

11 Q. Why wouldn't you feel compelled with a report
12 like that to discuss it with the employee labor
13 relations section chief, Steve Savino?

14 A. I can't answer that. I didn't see any reason to
15 discuss it with him.

16 Q. Because it wasn't important enough to you
17 perhaps?

18 MS. ASHER: Objection.

19 Q. Is that right?

20 MS. ASHER: Objection. Go ahead.

21 A. No. Because there may have been other people in
22 the medical center, such as the acting chief of
23 staff that would have done it instead.

24 Q. But you don't know that for a fact either, do
25 you?

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1 A. Not at this time, no.

2 Q. But there wasn't an acting chief of staff. There
3 was a chief of staff -- no, no. Wait a minute.
4 He may have left at that point. Dr. Altose may
5 have left but you don't even know that anybody
6 else discussed it with him?

7 MS. ASHER: Objection.

8 A. I can't recall.

9 Q. Well, who was the acting chief of staff who
10 followed Dr. Altose?

11 A. There were a series of acting chiefs of staff.

12 Q. Did you discuss the Spicer report or anything
13 related to it with any of the acting chiefs of
14 staff who followed after the retirement of
15 Dr. Altose?

16 A. I can't recall.

17 Q. So you didn't feel compelled to have any
18 discussions about the Spicer report with any of
19 the chiefs of staff subsequent to Dr. Altose; is
20 that correct?

21 MS. ASHER: Objection.

22 A. To my recollection, yes.

23 Q. All right. And is that because you didn't think
24 it was important enough?

25 MS. ASHER: Objection.

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1 A. No.

2 Q. Why?

3 A. It has nothing to do with importance. It has
4 something to do with whether there was action
5 that was required and I don't see that there was
6 action that was required from that report.

7 Q. Now you've been talking about going to the Office
8 of General Counsel; is that correct?

9 MS. ASHER: Objection.

10 Q. You mentioned it here just now?

11 A. What I said was when I have the opportunity to
12 read all the information that you have access to,
13 I may feel the need to go to the Office of
14 General Counsel.

15 Q. You said, "I don't know where we're at, so I
16 would need to talk to somebody," if you'll take a
17 look at what you actually testified to.

18 MS. ASHER: Can you direct her to
19 a page?

20 Q. Yeah. It's actually at the bottom of 80 and the
21 top of 81.

22 A. I think --

23 Q. I read that right? You did say, "I would need to
24 talk to somebody"? Right? You see where I'm
25 referring to it? It's the top of 81.

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1 A. So at the top of 81 I also say I have not seen --
2 "This is the first time I've seen this. I don't
3 know the context. I don't know where we're at."

4 So in looking at everything together, maybe I
5 was not clear, I would have to look at everything
6 and then determine if I would have to talk to
7 somebody.

8 Q. Okay. So you don't even know that you would
9 have -- at this point you don't know that you
10 need to talk to somebody; is that correct?

11 A. Correct.

12 Q. Even though -- it isn't clear. I agree with you.
13 Well, let's see if we can clarify it a little
14 more for you.

15 You can take out this one question because
16 it's going to come from here.

17 I'm just reading from the unredacted -- one
18 sentence. I'll just read it to you unredacted.

19 MS. ASHER: Before you start, can
20 we mark this confidential.

21 - - - -

22 (Begin confidential portion.)

23 - - - -

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15 (End of confidential portion.)

- - - -

17 Q. If you'll take a look at the same document.

18 MS. ASHER: Are you talking about
19 Exhibit 76?

20 MR. SINDELL: Yes. I am.

21 BY MR. SINDELL:

22 Q. So I will read this out loud starting at Page 77,
23 Line 18, so you can follow right along with me,
24 and this was a question I asked of Ms. Costanzo.

25 "Question: 'As you sit here now,

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1 Ms. Costanzo, do you have any fear that if you
2 say things in this deposition which are upsetting
3 or disturbing or critical with respect to
4 Dr. Raphaely, that you might be retaliated
5 against by her?'"

6 And the answer was: "Yes."

7 And then skipping down to Line 12 of Page 78:
8 "Doesn't that disturb you that somebody would be
9 afraid to testify truthfully under oath if it
10 meant saying something bad or negative about
11 Dr. Raphaely because fear of retaliation?"

12 And the answer to that was: Yes."

13 Okay? And then if you skip over again, the
14 same section we're talking about, on Page 79, and
15 it would be Line 23.

16 "Question: 'Did you ever tell Mr. Greenspan
17 that you were fearful of telling the whole truth
18 in answer to his question because of retaliation
19 from Dr. Raphaely?'

20 "Answer: 'I told him that I wanted to make
21 sure that I absolutely had to participate in it
22 before I actually participated in it because I
23 didn't want to get myself involved with this
24 situation.'

25 "Question: 'Did you tell him why you didn't

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1 want to get involved with it?'

2 "Answer: 'I feared my boss. I feared
3 Dr. Raphaely.'

4 "Question: 'Feared retaliation against you
5 from her?'

6 "Answer: 'Yes.'"

7 And then my question to you was on Line 14 at
8 Page 80, "Does that disturb you" and the answer
9 was "yes."

10 Okay?

11 A. Yes.

12 Q. You want to change that testimony?

13 MS. ASHER: Objection.

14 A. No.

15 Q. You want to say you need to know more about the
16 context before it disturbs you to hear that?

17 MS. ASHER: Objection.

18 Q. Is that what your testimony is?

19 MS. ASHER: Objection.

20 A. My testimony was that I do not want any employee
21 to be fearful of a supervisor; so, yes, it is
22 disturbing if an employee or employees say
23 they're fearful.

24 Q. So my, my -- I'm sorry. Did you finish your
25 answer?

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1 A. Yes.

2 Q. Okay. I thought I might have been interrupting
3 you and I didn't mean to.

4 Okay. So my question is simply this: I read
5 you, and this part is going to be separate.

6 MS. ASHER: We'll mark it as
7 separate.

8 - - - -

9 (Begin confidential portion.)

10 - - - -

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- - - -

2

(End confidential portion.)

3

- - - -

4

Q. Okay. Let's go on.

5

We also have somebody by the name of Robert

6

Bearss. Do you know who he is? You probably

7

don't remember because it came up in the last

8

deposition, but I'll remind you, okay? I

9

apologize. I should have realized that.

10

Mr. Bearss is the way he pronounces it,

11

B-E-A-R-S-S, is the chief CRNA, okay?

12

A. Okay.

13

Q. Sometimes referred to as the lead CRNA who has

14

some aspects of supervisory leadership with

15

respect to the other 15, 16 or whatever number

16

CRNAs are in the department of anesthesiology.

17

Do you understand who he is now?

18

A. Yes.

19

Q. Does that ring a bell from the previous

20

deposition?

21

A. Yes.

22

Q. Okay. Great.

23

So I'm going to hand you now a document that

24

I'm going to mark as Exhibit 77.

25

- - - -

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1 (Thereupon, Plaintiff's Exhibit 77, Bearss
2 4/5/19 deposition excerpt, was marked for
3 purposes of identification.)
4 - - - -

5 Q. And let's start with where I'm going to go anyway
6 and see if there's enough context here.

7 Page 54. It's the very first page of this
8 package.

9 Page 54, lower left block.

10 Question: "As you sit here now testifying,
11 do you have any fear that if she" -- meaning
12 Dr. Raphaely -- "becomes aware of something you
13 testified to that reflects badly on her that she
14 may retaliate against you?"

15 Answer: "I don't have a fear of it, I'm
16 pretty sure it would happen."

17 Do you see where I am?

18 A. No. I don't. I'm sorry. You said block 54.
19 Line?

20 Q. Oh, I'm sorry. I'll start again. It's the very
21 last line. Line 25, the very bottom of --

22 A. Okay. I'm sorry. I was looking at the top.

23 Q. No, you don't have to be sorry about it. It's my
24 fault.

25 A. No problem.

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1 Q. Okay. Let's start again.

2 This is Line 25, the last line on 54, jumping
3 up to the upper right, 55, right?

4 A. Yes.

5 Q. "As you sit here now testifying, do you have any
6 fear that if she" -- meaning Dr. Raphaely --
7 "becomes aware of something you testified to that
8 reflects badly on her that she may retaliate
9 against you?"

10 Answer: "I don't have fear of it, I'm pretty
11 sure it would happen."

12 Question: "What would happen?"

13 Answer: "There would be, she would do
14 something or try to do something to me because
15 she's upset about my testimony."

16 And then skipping down to Line 19 in the same
17 Page 55:

18 Question: "So if I follow you correctly, you
19 expect that she" -- meaning Dr. Raphaely -- "will
20 make efforts to retaliate against you in the some
21 way?"

22 Answer: "Yes."

23 Okay. Now, same question: Is that
24 disturbing to you?

25 MS. ASHER: Objection.

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1 A. As I previously stated, if there's any employee
2 that is feeling that they are in fear of
3 retaliation, that does concern me.

4 Q. He said he wasn't in fear. That's one of the
5 reasons I read that part to you. He says, "I
6 don't have fear of it, I'm pretty sure it would
7 happen."

8 And then he said -- I asked him, "So if I
9 follow you correctly, you expect she will make
10 efforts to retaliate against you in some way?"

11 And he said "yes." But he didn't say he was
12 afraid of it.

13 So that's why I'm asking you is nevertheless,
14 is this disturbing to you?

15 MS. ASHER: Objection.

16 A. Yes.

17 Q. That's because merely the fact that an employee
18 believes that Dr. Raphaely would retaliate
19 against him because of testimony that she
20 disliked that he gave, that would be disturbing
21 as well whether he feared it or not, correct?

22 MS. ASHER: Objection.

23 A. Yes.

24 Q. Are you aware that the, I think we've covered
25 three people, Bonfili and Costanzo and

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1 **Mr. Bearss.**

2 Are you aware that there are other people in
3 addition to them who have expressed a fear of
4 retaliation if they said something disturbing to
5 **Dr. Raphaely, retaliation from her?**

6 A. I was not aware of Mr. Bearss until this
7 testimony that I just read now and I am not aware
8 of anyone else.

9 Q. **If I told you that there are others, that would**
10 **be disturbing, too, right?**

11 MS. ASHER: Objection.

12 A. I can -- yes.

13 Q. **Does that make you feel compelled to discuss this**
14 **with general counsel?**

15 MS. ASHER: Objection.

16 A. I would like to see all the testimony before I
17 made a decision.

18 Q. **Well, that pushes you in that direction, though,**
19 **doesn't it?**

20 MS. ASHER: Objection.

21 Q. **What I've just showed you?**

22 MS. ASHER: Objection.

23 A. Yes.

24 Q. **And of course there is the Spicer report which**
25 **describes 15 out of 16 CRNAs who collectively in**

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1 some number expressed concerns about retaliation
2 and discrimination by Dr. Raphaely which you had
3 much earlier than this deposition, correct?

4 MS. ASHER: Objection.

5 A. Yes.

6 Q. All right. Now I'd like to review with you some
7 further things, if you will, but before we do
8 that, let me just ask you this: Withdrawn.

9 Turn the page.

10 MS. ASHER: On Exhibit 77?

11 Q. Yes. I'm sorry. That's right.

12 Off the record.

13 - - - -

14 (Thereupon, a discussion was had off the
15 record.)

16 - - - -

17 Q. All right. I'd like you to look at Page 76.
18 This is still, as it says at the very top,
19 the deposition of Robert Bearss who we've been
20 talking about, right? You see where it says
21 Robert Bearss, CRNA, April 5th?

22 A. Page?

23 Q. Right at the top.

24 A. Okay. Yes, I see that.

25 Q. I just wanted you to know it's his deposition.

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1 A. Yes.

2 Q. So I asked him, if you'll go to Page 76, which is
3 the lower right, Line 7. Are you with me?

4 A. Yes.

5 Q. It says, "Did you ever hear Karin Bonfili
6 indicate that she or any other CRNA of the group
7 of four..."

8 You know what the group of four is, correct?

9 MS. ASHER: Objection.

10 Q. Do you understand what the group of four is in
11 that question? Four CRNAs?

12 A. The four that made allegations of --

13 Q. You're absolutely right.

14 A. Okay.

15 Q. "Did you ever hear Karin Bonfili indicate that
16 she or any other CRNA of the group of four was
17 coached or instructed by Dr. Raphaely as to what
18 to write on any documents connected with the
19 investigation of Dr. Lisan?"

20 The answer was "yes."

21 Question: "Could you explain that?"

22 Answer: "I was told by Karin Bonfili that
23 she was coached on how to fill out her report and
24 also that Dr. Raphaely was looking over her
25 shoulder while she was filling out the report."

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1 Question: "'The report' meaning the ROC
2 report?"

3 Answer: "The ROC."

4 Question: "Report of contact?"

5 Answer: "Correct."

6 "And that would have been around January
7 sometime of 2017, to the best of your knowledge?
8 You can answer."

9 Answer: "It was on more than one occasion
10 she told me she was coached."

11 Question: "More than one occasion?"

12 Answer: "More than one occasion."

13 "With respect to ROC?"

14 "Correct."

15 "How about affidavit?"

16 Answer: "Yes."

17 Question: "How about testimony in her
18 deposition?"

19 And she said, "No."

20 And then if you will look at Page 79 which is
21 directly to the right of 77, on Line 6 -- or 7.

22 Line 7.

23 "Did you have any reason to believe that
24 she" -- meaning Karin Bonfili -- "was coached one
25 way or the other as to the truth or falsity of

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1 the contents of what she wrote on the ROC?"

2 And the answer was "yes."

3 My question to you is: Does that disturb you
4 as well?

5 MS. ASHER: Objection.

6 **Q. What I just read?**

7 MS. ASHER: Objection.

8 A. I don't understand why Karin Bonfili filled out a
9 police report and I believe that when Karin
10 Bonfili filled out a police report, Dr. Raphaely
11 was not there, so I, to me I question why she
12 feels she was compelled or forced by Dr. Raphaely
13 is what you're intimating that Karin complete an
14 ROC but yet on her own in March she went and
15 completed a police report.

16 **Q. Okay. I hear what you're saying, but my question
17 is are you telling me this doesn't disturb you
18 because you think that Karin Bonfili is
19 inconsistent in some way here?**

20 MS. ASHER: Objection.

21 A. It's odd that Robert Bearss is testifying on what
22 he may or may not know for Ms. Bonfili; but yet
23 Ms. Bonfili to my knowledge went on her own to
24 file a police report two months later.

25 **Q. And what if in fact she was told to go to the**

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1 police -- withdrawn.

2 What if in fact the actual circumstances were
3 that Dr. Raphaely advised her to go to Mr. Kafer
4 who was the EEO coordinator and Mr. Kafer told
5 her to go to the police?

6 MS. ASHER: Objection.

7 Mischaracterization. Go ahead.

8 A. So obviously we have a zero tolerance or we try
9 to have a zero tolerance for inappropriate
10 conduct and inappropriate behavior in our medical
11 center and as any supervisor if they hear that an
12 employee is fearful or feels that, you know,
13 someone has acted inappropriate to them, it is
14 their obligation to refer them either to EEO
15 and/or the police.

16 Q. Okay. You do understand that the report of
17 contact being referred to here is the report of
18 contact she initially made to Dr. Raphaely.

19 Do you understand that to be the case?

20 A. Yes. They just don't seem to make sense to me.

21 Q. It doesn't make sense to you that the first time
22 she went to Dr. Raphaely and Dr. Raphaely sat
23 over her shoulder and coached her on the truth or
24 falsity of the contents of her statement but when
25 she made two months later another report of

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1 contact, she went to the police on the advice of
2 Mr. Kafer? What does one have to do with the
3 other?

4 MS. ASHER: Objection.

5 A. So there were, to my recollection, a series of
6 events in early January by several CRNAs that
7 came to Dr. Raphaely's attention. As a
8 supervisor, I believe Dr. Raphaely did what was
9 appropriate and asked them to put a report of
10 contact together. I can't speak to how they were
11 coached, if they were told to put the facts in,
12 how they were coached.

13 I do know subsequent to that Dr. Lisan was
14 asked to stay away from these CRNAs and a couple
15 months later after Dr. Lisan had been asked a few
16 times to stay away, he didn't and there were
17 issues with both Ms. Costanzo and Ms. Bonfili at
18 which time, you know, the situation is different
19 because, you know, it happens once, you're asked
20 to stop. You've been warned to stop. The
21 behavior continues --

22 Q. I think you're speaking way beyond the question I
23 asked.

24 A. I apologize.

25 Q. So I'll ask it again, okay? Well, let me ask it

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1 a different way.

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2 Do you think it's appropriate under any
3 circumstances for Dr. Raphaely to be coaching
4 somebody making a report of contact alleging
5 sexual harassment on the part of Dr. Lisan as to
6 the truth or falsity of the contents of the ROC?
7 Do you think that's appropriate for Dr. Raphaely
8 to do that?

9 MS. ASHER: Objection.

10 A. I don't know what you mean by "coached." I
11 wasn't there.

12 I mean if she said tell the facts and nothing
13 but the facts, and helped that, I don't see an
14 issue with that.

15 If she said, you know, make up a story and
16 tell a lie here, I have a problem with that.

17 Q. Let's go on with this, okay?

18 References to Rhonda Verb on Page 79 and she
19 says -- I don't know why it says answer here.

20 "Let's go back to the Rhonda Verb thing,
21 though, for a second, if we may."

22 Question: "Yes."

23 Answer: "Dr. Raphaely approached me to ask
24 Rhonda if she had any complaints about Dr. Lisan
25 and, if so, to talk to Dr. Raphaely, and

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1 initially when she asked me that I didn't think
2 anything about it, but after the fact it makes me
3 wonder why she asked me to ask Rhonda."

4 Question: "As you sit and wonder about that,
5 does it appear to you that she was soliciting
6 negative things to produce and write about
7 Dr. Lisan?"

8 Answer: "Yes."

9 Question: "Taking into account what you just
10 read dated January 6, 2017, Exhibit 31" -- that's
11 a letter you got. Remember it?

12 A. Yes.

13 Q. -- "does it appear that these solicitations for
14 improprieties against Dr. Lisan were retaliatory
15 in nature?"

16 His answer is "yes."

17 Question: "And why do you believe that?"

18 Answer: "Because she asked me to ask
19 somebody who hadn't complained if they had a
20 complaint."

21 Question: "Had that ever happened with
22 Dr. Raphaely before where she came to you
23 soliciting complaints?"

24 Answer: "Yes."

25 Question: "Who did she do that with respect

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1 to?"

2 Answer: "She sent an email to all the
3 physicians asking if anybody had any problems
4 with Rhonda Verb's practice."

5 Question: "Did you or do you believe that
6 that was retaliatory against Rhonda Verb?"

7 Answer: "Yes."

8 Question: "And why do you believe that?"

9 Answer: "Because the accusation of
10 falsifying a medical record wasn't substantiated
11 by the documents that she had so she was
12 soliciting more evidence to pursue that
13 complaint."

14 Question: "Is it your belief based on the
15 evidence you reviewed regarding Rhonda Verb's
16 alleged falsification of data of a patient that
17 Dr. Raphaely knew that the claim was untrue when
18 she made the accusation?"

19 Answer: "Yes."

20 Question: "So if I understand your testimony
21 correctly, Dr. Raphaely intentionally made a
22 false accusation against Rhonda Verb knowing in
23 advance that it wasn't true, but rather that it
24 was false. Is that what you're saying?"

25 Answer: "Yes."

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1 **Question:** "Would that be a pretty good
2 definition of your understanding of the word
3 'malicious'?"

4 **Answer:** "Yes."

5 **Did I read that correctly?**

6 MS. ASHER: Objection.

7 MR. SINDELL: "Did I read that
8 correctly," objection?

9 MS. ASHER: I don't believe you
10 did read it correctly.

11 MR. SINDELL: What was the
12 mistake?

13 MS. ASHER: There are a number of
14 objections that are in the transcript that
15 you omitted.

16 MR. SINDELL: Of course I did.
17 Those aren't part of the answers.

18 MS. ASHER: Well, they're part of
19 what's written, so it's not read correctly.

20 **Q. Did I read what I read correctly? The words that
21 I did read appear on this document as questions
22 and answers?**

23 A. You read certain questions and answers. You did
24 not read the entire document but what you chose
25 to read, you read correctly.

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1 Q. Thank you. I was hoping you'd say that.

2 Okay. Isn't that disturbing to you?

3 MS. ASHER: Objection.

4 Q. Under oath Mr. Bearss, the lead chief CRNA,
5 testifying under oath that way? Isn't that
6 disturbing to you?

7 MS. ASHER: Objection.

8 Characterization.

9 A. I don't have the facts; so when I, when you read
10 what you read to me, if in fact someone had made
11 an allegation that someone had falsified a
12 medical record, that's a pretty serious offense;
13 and as a supervisor, I think there is a
14 responsibility to determine if this was an
15 isolated incident, if it wasn't accurate or if
16 there were more and, you know, was due diligence
17 being done or was it considered malicious. Based
18 on what you read to me, I cannot provide an
19 answer to you.

20 Q. Yes. You would need more information, correct?

21 A. Yes.

22 Q. But let's just assume for a moment that this
23 testimony as it is is accurate, that Mr. Bearss
24 himself personally investigated it and
25 concluded -- I'm telling you this, not reading it

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1 to you -- and concluded that there was absolutely
2 nothing to support the charge of falsification
3 and in fact no further action was taken after
4 that was made known.

5 If that was the case, wouldn't that disturb
6 you?

7 MS. ASHER: Objection.

8 Characterization.

9 A. I don't interpret it the same way you're
10 interpreting it.

11 Q. Oh, okay.

12 A. You know, I don't know what Mr. Bearss may or may
13 not have known. If he knew the complete story.

14 Q. Do you have any reason -- I'm sorry. Go ahead.

15 A. I don't have any reason to doubt anybody.

16 Q. Well, you have no reason to doubt him either?

17 A. No, but I don't have the complete information.

18 Q. But is it alarming enough for you to look into it
19 and find out what the facts are?

20 A. Yes.

21 Q. Thank you. So you plan to do that, then, right?

22 MS. ASHER: Objection.

23 A. When I get all the documents that you are privy
24 to, I will review everything.

25 Q. So four years from now you may have a chance to

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1 **review it all?**

2 MS. ASHER: Objection.

3 **Q. Is that what you're saying?**

4 MS. ASHER: Objection.

5 A. I would hope it would be sooner than four years.

6 **Q. And what would that take? How long?**

7 MS. ASHER: Objection.

8 **Q. How long would it take for you to do it?**

9 MS. ASHER: Objection.

10 A. As long until I can get the same information that
11 you have.

12 **Q. Okay. You don't have to wait to start looking
13 into some of this stuff, do you?**

14 MS. ASHER: Objection. Vague.

15 A. I don't know.

16 **Q. What don't you know?**

17 A. I don't know if this is an active investigation
18 right now with what's going on. I don't know who
19 has privy to this information.

20 **Q. I'd like to know if as of this point in time, and
21 there's going to be more to come right here in
22 this deposition, but as of this moment in time
23 you intend to begin immediately looking into some
24 of these matters?**

25 MS. ASHER: Objection. This is

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1 not an appropriate question for this
2 deposition.

3 MR. SINDELL: I don't think you're
4 right.

5 BY MR. SINDELL:

6 **Q. But go ahead.**

7 A. I will be looking into these matters to the best
8 of my ability; but I don't have the same
9 documentation that you have, and can I take these
10 with me?

11 **Q. I will be happy, and so will your counsel, to**
12 **supply you with all of the testimony under oath**
13 **and all of the supporting documentation in this**
14 **case.**

15 A. And I would appreciate that.

16 **Q. Well, I'm not the one who's your, I mean it isn't**
17 **my job to present you with material because**
18 **you're represented by counsel. So you're asking**
19 **counsel to do that?**

20 A. If I am able to ask counsel, I will ask counsel
21 if they can provide this to me now.

22 **Q. Okay. Why wouldn't you be able to ask counsel?**

23 MS. ASHER: Objection.

24 **Q. Is there some reason you can't talk to your own**
25 **lawyer?**

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1 MS. ASHER: Objection.

2 A. No. I just don't -- I'm sorry, I don't
3 understand the, if there are procedural issues
4 that would prevent me from having it. If I'm --

5 Q. Oh, they'll tell you if there are procedural
6 issues, won't they?

7 MS. ASHER: Objection. You are
8 not going to answer that. Now you're
9 intruding into attorney/client privileged
10 information.

11 MR. SINDELL: No, I'm not.

12 MS. ASHER: Yes, you are. And
13 this area of deposition questioning is
14 highly inappropriate.

15 MR. SINDELL: I don't think I am.

16 MS. ASHER: I think you are.

17 MR. SINDELL: And I'll tell you
18 why I'm not: Because it's not legal
19 advice. It's a request for information.
20 That's not your giving any legal advice to
21 anybody. It's even a conversation that
22 hasn't taken place, so therefore it isn't
23 covered by any privilege at all and what I
24 think is clear here, and I will bring it up
25 if necessary, is that you are being told on

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1 the record by the head of the agency that
2 you represent that she wants to have the
3 records that go into these things now and
4 that's what's on the record.

5 So you've been told, you've been
6 asked and I intend to stand on that; but
7 let's continue with the deposition.

8 BY MR. SINDELL:

9 Q. I'd like you to take a look at Page 83 at the
10 top, Line 8.

11 "Can you tell me what you recall Karin
12 Bonfili saying on that subject of being used by
13 Dr. Raphaely?"

14 Answer: "She thought Karin, Karin thought
15 that Dr. Raphaely was concerned about her
16 complaint and the fact that she was concerned
17 about Karin and in reality she was more concerned
18 about getting the complaint than she was about
19 the contents of the complaint."

20 Question: "And that's what Karin, Karin
21 Raphaely communicated to you?"

22 And his answer was, because I said it wrong:
23 "That's what Karin Bonfili communicated."

24 Question: "Karin Bonfili. Let me repeat the
25 question." Oh, I actually repeated it.

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1 "That's what Karin Bonfili stated to you,
2 what you've just said?"

3 **Answer:** "That is correct."

4 **Is that a matter of concern to you?**

5 MS. ASHER: Objection.

6 **Q.** If you assume that Karin Bonfili expressed that
7 about Dr. Raphaely, if you just assume that,
8 isn't that worth looking further into in your
9 mind?

10 MS. ASHER: Objection.

11 A. Sure.

12 **Q.** Okay. You don't seem overly enthused about it?

13 A. No, I'm not. It's getting he said/she said/he
14 said. I mean there's just a lot of, you know.

15 **Q.** Well, isn't that the way that investigations and
16 the concerns are triggered, he said and she said?

17 A. These are very highly paid professional people
18 and I would think if someone had concerns or
19 whatever, they would bring these things to the
20 attention rather than this; but that's just me.

21 **Q.** No. No. I understand you think they'd bring
22 them to, your answer was they'd bring them to the
23 attention of a manager or higher authority,
24 correct?

25 A. Right. I've seen better behavior out of our

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1 housekeepers.

2 Q. Is that correct that you thought that they would
3 just bring it to a higher authority?

4 A. Yes.

5 Q. So let's take a look at 84 now that you just
6 mentioned that.

7 Question, Line 16. Are you with me?

8 A. Yes.

9 Q. "Do you recall Karin Bonfili expressing to you
10 that she was afraid to tell the whole truth to
11 Investigator Greenspan of the VA investigating
12 Dr. Lisan's issues out of fear of retaliation
13 against her by Dr. Raphaely?"

14 Answer: "Yes."

15 Now, you've already agreed that that's
16 disturbing, that she'd be afraid to talk to
17 somebody investigating this?

18 A. Yes.

19 Q. Because she'd be afraid of being retaliated
20 against?

21 A. Yes.

22 Q. And as a matter of fact, if we --

23 MS. ASHER: We'll mark this
24 section.

25 MR. SINDELL: I'm not sure -- this

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1 will be separated, just this one area here.

2 - - - -

3 (Begin confidential portion.)

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(End of confidential portion.)

- - - -

Q. I'd like to have you turn to the next page, Page
85 I think it is, and that would be --

MS. ASHER: That's on 77 again?

Q. Yes. We're still on... are you with me on that
page?

A. 85?

Q. Yes.

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1 A. Yes.

2 Q. I'm going to start at Line 19 and this is, again,
3 to Mr. Bearss.

4 Question: "So tell me what Karin Bonfili
5 actually told you that you heard her say on the
6 subject of her fear of retaliation in connection
7 with ... Mr. Greenspan?"

8 Answer: "Karin Bonfili told me she didn't
9 want to talk to Mr. Greenspan for fear of
10 retaliation from Dr. Raphaely."

11 Question: "Did she share with you that she
12 told Mr. Greenspan that?"

13 Answer: "Yes, she did."

14 And my question to you is: Does that alarm
15 you?

16 MS. ASHER: Objection.

17 Q. If you assume the truth of that testimony?

18 MS. ASHER: Objection.

19 Characterization. Go ahead.

20 A. This alarms me. It also alarms me if Ms. Bonfili
21 then completed a false police report.

22 Q. I would agree with that, too. Okay? But I
23 mean --

24 A. I mean some things just, this just doesn't add
25 up.

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1 Q. What if she testified under oath that she
2 couldn't remember any of this?

3 MS. ASHER: Objection.

4 Characterization.

5 Q. Would that surprise you? Withdraw. I withdraw
6 that, you're right.

7 Question, I'm looking at Page 86 Line 4:
8 "Did she ever, did she Karin Bonfili ever
9 indicate that Dr. Raphaely had called her into
10 Dr. Raphaely's office to tell her not to indicate
11 that she had been coached by Dr. Raphaely?"

12 Answer: "Yes."

13 Would that disturb you in light of what we've
14 already revealed here in some of this testimony?

15 MS. ASHER: Objection. Go ahead.

16 A. If this is true, yes.

17 Q. Yes, of course. That's pretty shocking, isn't
18 it?

19 MS. ASHER: Objection.

20 A. The whole thing is bizarre.

21 Q. Okay. I'd like you to turn the page, please.

22 A. 99?

23 Q. 99. You got it.

24 A. Yes.

25 Q. It's the upper right box Line 6.

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1 **Question:** "Did Dr. Raphaely ever express an
2 interest or desire or intention to get Dr. Lisan
3 out of the department of anesthesiology at the
4 Cleveland VA?"

5 **Answer:** "Yes."

6 **Question:** "When was that?"

7 **Answer:** "I can't give you a specific date.
8 It was after, it was after this letter was sent."

9 **Question:** "After January 6th?"

10 That's the letter that you received, that's
11 the letter that we're referring to here.

12 MS. ASHER: Objection.

13 **Q. Do you understand that?**

14 A. Yes. It was also done likely after the reports
15 of contact from the CRNAs.

16 **Q. Yes.**

17 A. That came in like the 7th, 8th and 9th. Right?
18 Wasn't that January 7th, 8th and this is when
19 they came? No?

20 **Q. No. The first one was January 10th?**

21 MS. ASHER: Objection.

22 A. Okay.

23 **Q. Okay. After January 6th, 2017? Yes. Okay.**

24 Let's assume it was true. Do you think it's
25 appropriate for Dr. Raphaely to desire or intend

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1 to get Dr. Lisan out of the department of
2 anesthesiology simply because an allegation was
3 made against him?

4 MS. ASHER: Objection.

5 Characterization.

6 A. I can't answer that question.

7 Q. Why not?

8 A. Because there may have been other factors.

9 Q. The allegation of sexual harassment was found not
10 to even be sexual harassment. Based on an
11 allegation like that, do you think intending to
12 get rid of him from the department is somewhat
13 disturbing?

14 MS. ASHER: Objection.

15 Characterization.

16 A. There may have been other factors. This may not
17 have been the entire factor. There may have been
18 issues such as tardiness that may have led to
19 that.

20 Q. But the tardiness was never a major issue here.

21 Did you know that?

22 MS. ASHER: Objection.

23 Characterization.

24 MR. SINDELL: Yes, it is a
25 characterization.

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1 MS. ASHER: Mischaracterization.

2 Q. It was mentioned but it wasn't a basis for any
3 disciplinary action that was taken in connection
4 with this matter. Did you know that?

5 A. Yes.

6 Q. Then doesn't that tell you that she wouldn't get
7 rid of him because of tardiness?

8 A. Well, we certainly want all of our very highly
9 paid physicians to come on time. If you were
10 wanting surgery, you'd want your case to start on
11 time.

12 Q. And do you know if any case didn't start on time
13 because he was tardy? Do you have any reason to
14 believe that?

15 A. I do know that as a whole our medical center had
16 issues with late start times as measured by a
17 national report.

18 Q. And you think that's the reason that on
19 January -- after January 6th Dr. Raphaely
20 expressed a desire to get rid of Dr. Lisan
21 because of tardiness?

22 A. I don't --

23 MS. ASHER: Objection.

24 A. I don't know.

25 Q. Yes, you do in the sense, in the sense that if

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1 **it's not --**

2 A. Please don't shake your finger to me.

3 Q. -- if it's not even on, if it's not even on the
4 suspension that you yourself affirmed for
5 Dr. Lisan, you know very well that it wouldn't be
6 a reason why she'd want to get rid of him.

7 MS. ASHER: Objection.

8 A. I think in your letter response to Dr. Altose,
9 you bring up the tardiness.

10 Q. Well, I may bring it up.

11 A. You said that there wasn't an issue and there was
12 an issue as documented by the chief of anesthesia
13 prior to Dr. Raphaely, Dr. David Kazdan.

14 Q. But it wasn't a current issue, was it?

15 MS. ASHER: Objection.

16 A. I believe there were issues with Dr. Lisan coming
17 to work on time.

18 Q. With Dr. Raphaely? Current issues at this time
19 January 2017?

20 MS. ASHER: Objection. Go ahead.

21 A. It is my recollection, yes.

22 Q. Uh-huh.

23 Did you know when he returned from months of
24 absence for medical treatment? Do you know what
25 date he returned?

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1 A. I do not know the specific date.

2 Q. December 7th, 2016. Okay? At that particular
3 time were there any pending issues of tardiness
4 at that time?

5 A. I can't answer that. I don't have the specific
6 dates.

7 Q. Well, if --

8 A. Dr. Lisan is four or five levels below me and I
9 can't keep track of time and attendance for
10 thousands of employees.

11 Q. So you're suggesting that it might have been that
12 the reason after January 6th, 2017 that
13 Dr. Raphaely might have desired to get Dr. Lisan
14 out of the department of anesthesiology at the VA
15 was because of tardiness? Is that your
16 testimony?

17 MS. ASHER: Objection. Go ahead.

18 A. My testimony was that this may not have been the
19 only reason, so you asked me to assume and I said
20 there could be other reasons.

21 Q. There could be, and the one you've identified as
22 a possible other reason is tardiness?

23 A. Which was included in your response to Dr. Altose
24 so obviously it was an issue at some point.

25 Q. Let's go to Page 101, the next page. It's the

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1 last page, top left. You see it? Line 1?

2 A. Yes.

3 Q. Question: "Did she" -- meaning Dr. Raphaely --
4 "ever indicate that she wanted Ken Moss" --
5 that's another anesthesiologist?

6 A. I know Dr. Moss.

7 Q. -- "out of the department?"

8 Answer: "Yes."

9 "When did you hear that?"

10 "Around the same time."

11 "But did she tell you why she wanted Ken Moss
12 out of the department?"

13 "No."

14 So now what would you like to suggest as the
15 reason, if you know, that she also wanted to get
16 rid of Dr. Moss?

17 A. I don't have any information on that.

18 Q. Did you know that Dr. Moss was also pursuing an
19 EEO complaint against Dr. Raphaely at the time --
20 well, in approximately the same time?

21 MS. ASHER: Objection.

22 A. I know Dr. Moss was filing an EEO. I can't
23 recall the time.

24 Q. Was what? I'm sorry?

25 A. I know Dr. Moss was, had some issues and it may

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1 have been an EEO but I don't recall the exact
2 time.

3 MR. SINDELL: Okay. You want to
4 take a break?
5 - - - -

6 (Thereupon, a recess was had.)
7 - - - -

8 MR. SINDELL: Back on the record.

9 BY MR. SINDELL:

10 Q. So do you know what this is?

11 A. Yes.

12 Q. Do you need to read the whole thing?

13 A. Can I glance at it please?

14 Q. Time's up.

15 A. That was a glance, okay.

16 Q. It's just really a couple sentences here. Can I
17 tell you where I'm going to be?

18 A. Sure.

19 Q. I'm looking at Page 2, Part B, so one little
20 paragraph. "Responsibilities."

21 A. Got it.

22 Q. All right. I'm showing you what has been
23 previously marked as Exhibit 6 and can you
24 identify this as the report of Bruce Kafer in his
25 capacity as EEO affirmative employment manager

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1 with a copy to Dr. Raphaely and the medical --
2 actually, you, medical center director. That's
3 you?

4 A. That's me.

5 Q. So you got a copy of this as well?

6 A. Yes.

7 Q. Do you remember receiving it?

8 A. Yes.

9 Q. All right. So I'd like to direct your attention
10 to Page 2 Section B and to this sentence: "When
11 conduct perceived as sexual harassment occurs, it
12 is incumbent on the recipient to verbally direct
13 the perpetrator of the unwanted conduct to cease
14 and desist the unwanted actions," and then it
15 goes on to say, "and then report the occurrence
16 to the appropriate management official and also
17 provide written documentation regarding the
18 incident." Okay?

19 A. Yes.

20 Q. Now, concentrating on the sentence, "When conduct
21 perceived as sexual harassment occurs, it is
22 incumbent on the recipient to verbally direct the
23 perpetrator of the unwanted conduct to cease and
24 desist the unwanted actions."

25 Do you agree with that sentence?

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1 A. Yes.

2 Q. Isn't that part of the rules and protocols of the
3 policy of the medical center?

4 A. Yes.

5 Q. Do you have any disagreement with that?

6 A. No. In fact, we actually had a group of people
7 go and talk to all of anesthesia in March I
8 think, after, shortly after the police report to
9 let everybody, give everybody the policy and let
10 everybody know because it seemed like people were
11 making statements and we just wanted everybody in
12 the entire service to have a copy of the policy
13 so we actually shared that with them.

14 Q. Okay. I think you even spoke there.

15 A. I spoke, yes.

16 Q. Anybody else?

17 A. I don't recall who spoke. I can tell you who was
18 there.

19 We had someone there from the Office of
20 General Counsel. We had Dr. Altose. We had the
21 chief of human resource management. We had the
22 EEO manager. There may have been others but
23 those are probably, so, you know, we tried to
24 cover EEO. We tried to cover employee relations.
25 We tried to cover any legal aspects just to try

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1 to make sure that every employee heard the same
2 message at the same time.

3 **Q. This was a meeting in March?**

4 A. I believe so.

5 **Q. Would it have been a meeting with the**
6 **anesthesiology staff on March 13, 2017?**

7 A. That sounds about right.

8 **Q. To address appropriate medical center contact and**
9 **the need to timely report?**

10 A. Yes, and conduct. I think it was conduct. Was
11 that contact or conduct?

12 **Q. Contact here.**

13 I'm reading so, you know, I'm reading, I just
14 got this today, the response to an interrogatory
15 we had sent to the defendant, to the VA and
16 that's the answer.

17 A. Okay.

18 **Q. Part of the answer, I should say referring to**
19 **March 13. I thought that was the one you were**
20 **talking about?**

21 A. Yes, it was.

22 **Q. And you said you handed out --**

23 A. I think this policy.

24 **Q. The 003 policy?**

25 A. The 003, I believe so.

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1 Q. I guess then I would have to ask we asked for a
2 request for production. It says please produce
3 all documents, attendance, sign-in sheets and
4 materials referenced in plaintiffs Interrogatory
5 Number 5, which is the one I just was reading
6 that referred to March 13, also an April 19
7 meeting, but the one you're talking about --

8 A. I'm not aware of the April 19th meeting.

9 Q. I understand. March 13, 2017, so it refers to
10 producing all documents, materials referenced for
11 each education meeting, team meeting, team
12 building or other meeting at which sexual
13 harassment or related matters were discussed.

14 You know what? I don't know how it got into
15 that. This was in 2017. I might have misstated
16 it. Withdrawn. My mistake.

17 Okay. To your knowledge were those the only
18 materials that were passed out that day?

19 A. Yes. Just the policy.

20 Q. Okay. Now, if you will turn to Page 5 of this
21 document and if you will look at the last full
22 paragraph beginning with "While the complainants
23 have cited."

24 Do you see that?

25 A. Yes.

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1 Q. Why don't you take a moment and look at that.

2 A. I've read it.

3 Q. Okay.

4 A. Yes.

5 Q. So I'll read it for the record. And then I have
6 a question.

7 "While the complainants have cited that
8 Dr. Lisan has engaged in sexually inappropriate
9 jokes and commentary throughout the course of
10 their employment" -- their being I think CRNAs --
11 "there is no indication that anyone informed him
12 to stop with the exception of Elaine Costanzo,
13 after which he stopped."

14 Would you agree that with the exception of
15 Elaine Costanzo mentioned there, the other
16 complaining CRNAs did not comply by not telling
17 him to cease and desist or stop --

18 A. But they had.

19 Q. -- when -- I haven't finished the question.

20 A. I'm sorry. I apologize.

21 Q. Would you agree that with the exception of Elaine
22 Costanzo, that if no other of the CRNA
23 complainants, that's three others out of the
24 four, told him to stop saying or doing whatever
25 it was that made them uncomfortable, that that

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1 **was contrary to the policy annunciated by**
2 **Mr. Kafer on Page 2 that we just read that it's**
3 **incumbent on the recipient to verbally direct the**
4 **perpetrator of the unwanted conduct to cease and**
5 **desist?**

6 MS. ASHER: Objection. Go ahead.

7 A. But the employees had, several employees had
8 written report of contacts and Dr. Lisan had been
9 asked by Dr. Raphaely to please stop and that was
10 in January and in March there was a police report
11 where Dr. Lisan had gone into an operating room
12 for which he did not have official business to do
13 and, per the police report, put his hands on
14 Ms. Bonfilli and there was also a report of
15 contact in March, after Dr. Lisan had been asked
16 by his supervisor to only have official business,
17 called another CRNA, I believe it was
18 Ms. Costanzo, at home saying she needed to get
19 someone else to work because she didn't say hi to
20 him in the hallway or something like that.

21 Q. **There were four initial complaints, initial ones**
22 **which were before any -- well, which were**
23 **certainly before the police report issue, that**
24 **policy, the initial ones, and it was only the**
25 **Elaine Costanzo in references to that complaint**

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1 that asked him to stop.

2 The other three with respect to their initial
3 complaints to Dr. Raphaely did not ask him to
4 stop nor did they ask him for all the period of
5 time that allegedly preceded the date of
6 December -- or January 2017; is that correct?

7 MS. ASHER: Objection. Go ahead.

8 A. Regardless, Dr. Lisan --

9 Q. I didn't ask you regardless. Excuse me.

10 The question is is that correct?

11 A. No.

12 Q. Okay. Why is that not correct?

13 A. Because Dr. Lisan had received direction from his
14 supervisor to not have contact; so while the
15 employees did not tell him, they told their
16 supervisor, the supervisor told him and he chose
17 to ignore the direction of his supervisor and two
18 months later entered an operating room with a
19 patient under anesthesia undergoing a surgery and
20 touched a CRNA that required another doctor to
21 come in so that she could leave. That is a
22 patient safety matter and that is the concern
23 that I have.

24 Q. Okay. But I didn't ask you that.

25 A. I'm sorry, but that's the whole content.

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1 Q. My question to you for the third time is: Prior
2 to the instructions from Dr. Raphaely, nobody
3 except Elaine Costanzo complained directly to
4 Dr. Lisan at the time he was allegedly making
5 them uncomfortable that they objected to these
6 unwanted alleged remarks; is that correct?

7 MS. ASHER: Objection. Go ahead.

8 A. In 2015 it's documented that Dr. Lisan was
9 talking about his own male genitalia, I would
10 expect an anesthesiologist that has high degrees
11 that has completed harassment --

12 MR. SINDELL: Okay. We're going
13 to -- her answers to these questions are so
14 derelict that I'm going to consider right
15 now, unless you can talk to her and tell
16 her to answer my questions, to terminate
17 this deposition and go to court.

18 Now, she knows very well that I
19 said except for Elaine Costanzo and I asked
20 her a very simple question and she's
21 choosing not to answer it and I am about to
22 terminate this deposition and seek
23 sanctions from the court.

24 MS. ASHER: Steve.

25 MR. SINDELL: Now, either she's

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1 going to answer questions or we're going to
2 terminate this deposition. This is not a
3 soapbox for --

4 MS. ASHER: This is not a soapbox
5 for anybody, Steve.

6 MR. SINDELL: -- this witness to
7 just talk about whatever she'd like to say
8 irrespective of the question that's asked.
9 It is, I believe it is something that she's
10 doing which is just completely improper and
11 I can't imagine that she doesn't know the
12 question that's being asked.

13 I'm going to do this one more
14 time. I'm going to ask the court reporter
15 to repeat the question and if she does this
16 again, I will terminate this deposition.

17 MS. ASHER: Now, before you do,
18 however, I'm going to respond to your
19 comments.

20 MR. SINDELL: You can respond all
21 you want.

22 MS. ASHER: First of all, none of
23 us are entitled to a soapbox here. Second
24 of all, you asked a question that doesn't
25 have a simple answer.

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1 The question might be simple but
2 the answer is complicated --

3 MR. SINDELL: The court rule --

4 MS. ASHER: -- and the witness has
5 the right to explain her answer fully.

6 MR. SINDELL: She didn't answer at
7 all.

8 MS. ASHER: So I'm going to ask
9 you --

10 MR. SINDELL: She didn't answer at
11 all.

12 MS. ASHER: No, Steve. You need
13 to give her the opportunity to answer your
14 question fully.

15 MR. SINDELL: I've given her the
16 opportunity to fully answer.

17 MS. ASHER: Then please allow her
18 to fully answer.

19 MR. SINDELL: She stops talking
20 and it's not an answer. Now your statement
21 on this record is also part of it.

22 MS. ASHER: I understand.

23 MR. SINDELL: And you know very
24 well, you do know very well that she's not
25 explaining an answer. She's not giving an

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1 answer and the record is so --

2 MS. ASHER: I disagree with you.

3 I heard her answer your question twice.

4 MR. SINDELL: Then you can tell
5 the judge that because I think what you're
6 doing is contrary to what you should be
7 doing which is telling her to answer
8 questions and if you don't, if you don't
9 want to give her that instruction and you
10 don't agree with me, then the judge will
11 have to decide whether your statement on
12 this record conforms to what actually
13 occurred, and it doesn't.

14 Now I'm going to, one more time
15 I'm going to have the court reporter read
16 it and if she doesn't discontinue this, I
17 will stop the deposition, and I mean it,
18 and I will seek sanctions, and I mean it.

19 Now read back the last question I
20 asked before the long answer and I expect
21 it to be answered and that includes every
22 other question. We're not going to have
23 long narratives that have nothing to do
24 with the question I ask. It's a simple
25 question, and you know it. Go ahead and

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1 read it back to her.

2 THE NOTARY: "My question to you
3 for the third time is: Prior to the
4 instructions from Dr. Raphaely, nobody
5 except Elaine Costanzo complained directly
6 to Dr. Lisan at the time he was allegedly
7 making them uncomfortable that they
8 objected to these unwanted alleged remarks;
9 is that correct?"

10 A. I don't know.

11 Q. Would you please explain to me what you think
12 Mr. Kafer meant on Page 5 when he wrote, "There
13 is no indication that anyone informed him to stop
14 with the exception of Elaine Costanzo, after
15 which he stopped." What's that?

16 A. There is the --

17 MS. ASHER: Objection. Go ahead.

18 A. I'm sorry.

19 MS. ASHER: Go ahead.

20 A. While there is no indication, I don't know that
21 means that it didn't happen. I'm sorry.

22 Q. You believe what Mr. Kafer wrote?

23 MS. ASHER: Objection. Go ahead.

24 A. Yes.

25 Q. If that's true, then would you agree with me that

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1 to the extent that there was no request on the
2 part of the recipient complaining CRNA
3 communicating to Dr. Lisan that they were
4 unwelcome remarks, that that would be contrary to
5 the policy on Page 2 that Mr. Kafer annunciated?

6 MS. ASHER: Objection.

7 A. Yes. I'm sorry.

8 MS. ASHER: Go ahead and answer.

9 A. Yes.

10 Q. All right. I'd like to have you look at Exhibit
11 42.

12 Have you ever seen this before?

13 A. I don't recall.

14 Q. Okay. It is a memorandum is from Dr. Raphaely to
15 Dr. Lisan dated March 9, 2017 called "Written
16 Warning" and it's under a document called
17 "Memorandum;" is that correct?

18 A. Yes.

19 Q. It says, if you look at Number 2 in the middle,
20 it says: "You were previously instructed to
21 refrain from discussing this allegation,"
22 referring to allegations that made CRNAs
23 uncomfortable allegedly of a sexual nature, and
24 it says, "You were previously instructed to
25 refrain from discussing this allegation with your

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1 coworkers."

2 Did I read that correctly?

3 A. Yes.

4 Q. Would you agree with me that coworkers is not by
5 itself limited, limit itself to simply the four
6 CRNAs as it's written here?

7 MS. ASHER: Objection.

8 A. Yes.

9 Q. Do you think it's a proper mandate from
10 Dr. Raphaely to Dr. Lisan --

11 A. I don't have --

12 Q. -- to refrain from discussing allegations of
13 sexual harassment with every single one of his
14 coworkers in the department of anesthesiology?

15 MS. ASHER: Objection.

16 Characterization. Go ahead.

17 A. I don't have an issue with it.

18 Q. What?

19 A. I do not have issue with it.

20 Q. In other words, it's okay, within her authority
21 to do that, for Dr. Raphaely to say don't talk to
22 any of your coworkers about it. Is that your
23 testimony?

24 MS. ASHER: Objection. Go ahead.

25 A. If that's what Dr. Raphaely instructed, yes.

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1 Q. Do you think Leshelle Reece, you know who she is?

2 A. Yes.

3 Q. Do you think she's qualified to answer that
4 question about whether that's a proper
5 instruction from Dr. Raphaely?

6 A. Yes.

7 MS. ASHER: Objection.

8 A. Yes.

9 Q. If she said that that's not proper, would you
10 have any reason to disagree with her?

11 A. No.

12 Q. Do you know of any restrictions Dr. Raphaely
13 placed on any of the complaining CRNAs, the four
14 of them, not to talk to anybody or any particular
15 people about the matter, the allegations?

16 A. No.

17 Q. So to your understanding these four complaining
18 witnesses, complaining CRNAs were free to talk to
19 anybody and everybody in the entire department of
20 anesthesiology about these allegations, correct?

21 MS. ASHER: Objection. Go ahead.

22 A. I don't know if they were given anything, I don't
23 know.

24 Q. They weren't. Okay?

25 Do you see a problem with Dr. Lisan being

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1 prohibited from talking to coworkers about these
2 allegations where the CRNAs who are complaining
3 about Dr. Lisan could talk to anybody and
4 everybody in the entire department anytime they
5 wanted to?

6 MS. ASHER: Objection. Go ahead.

7 A. I believe at my first deposition we went through
8 the checklist and we identified a discrepancy and
9 we've addressed that.

10 May I add one more thing? Please?

11 Most of these letters of counseling are
12 prepared in conjunction with employee relations
13 labor specialists and --

14 Q. You don't know if this was or wasn't?

15 A. I don't know for sure, but I suspect it was.

16 Q. Well, Leshelle Reece did not indicate at any time
17 that she had anything to do with that?

18 MS. ASHER: Objection.

19 A. It would not be from Ms. Reece. It would have
20 been from the employee labor relations section.

21 Q. And so the employee labor relations section would
22 have participated in prohibiting Dr. Lisan from
23 talking to any of his coworkers in the entire
24 department about any of the allegations against
25 him; is that your testimony?

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1 MS. ASHER: Objection.

2 A. I'm just stating that based on what was written
3 here, it probably wasn't written unilaterally by
4 Dr. Raphaely.

5 Q. Which tells me then that you believe it was
6 likely endorsed by an employee relations
7 specialist?

8 A. It may have been.

9 Q. That would be kind of derelict, wouldn't it, of
10 an employee relations specialist to prohibit
11 Dr. Lisan from talking to any coworker in the
12 entire department of anesthesiology about these
13 allegations; wouldn't you agree?

14 MS. ASHER: Objection.

15 A. I can't comment.

16 Q. You can't comment on that? Okay.

17 It also says, and I'll have you look at it:
18 "Additionally you are to refrain from discussing
19 these allegations with your coworkers." It says
20 it again, coworkers.

21 Do you see that? It starts with the word
22 "additionally."

23 A. Okay.

24 Q. Correct?

25 A. Yes.

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1 Q. Okay. When you sustained the proposed suspension
2 prepared by Dr. Raphaely of Dr. Lisan, did you
3 have knowledge of this memorandum?

4 A. It may have been in the evidence file.

5 Q. Do you have any -- well, did you actually read
6 the evidence file before you affirmed his
7 suspension?

8 A. Yes.

9 Q. But you don't remember if this was in there?

10 MS. ASHER: Objection. Go ahead.

11 A. It probably was but I don't recall specifically.
12 It's been a couple years.

13 Q. Okay. Let's actually take a look at your
14 suspension decision. I don't think we've marked
15 this ever; but if we did, for the record and all
16 others concerned, I apologize.

17 This is Exhibit 78.

18 - - - -

19 (Thereupon, Plaintiff's Exhibit 78, 6/20/17
20 Fuehrer letter to Lisan, was marked for
21 purposes of identification.)

22 - - - -

23 Q. All right. First of all, can you identify this
24 document?

25 A. Yes.

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1 Q. What is it?

2 A. It's my decision regarding the suspension of
3 Dr. Lisan.

4 Q. On Number 4, do you see it down there on the
5 first page?

6 A. Yes, sir.

7 Q. The first sentence says, "The sustained reasons
8 do not involve a question of professional conduct
9 or competence."

10 Are you with me?

11 A. Yes.

12 Q. Could you define what you meant by "professional
13 conduct"?

14 A. For employees that are Title 38, which are,
15 meaning clinical employees, physicians and
16 nurses, there are differences for disciplinary
17 action when they involve professional conduct or
18 competence such that is he qualified to be an
19 anesthesiologist, were there issues with his
20 ability to perform anesthesia and conduct his
21 clinical duties versus nonprofessional conduct is
22 what that means.

23 Q. Okay. When you use the phrase "professional
24 conduct," does that include making the
25 inappropriate remarks to employees?

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1 A. No. To me this means professional conduct in his
2 ability to conduct himself as a physician, a
3 clinician.

4 Q. **You mean actually --**

5 A. Performing his, in conducting his clinical
6 duties.

7 Q. **So when you say "clinical duties," you mean
8 taking care of patients and that kind of thing?**

9 A. Like, you know, so for nurses, you know, did the
10 nurse have professional conduct such as did you
11 abuse a patient, physically abuse, mentally
12 abuse.

13 Q. **It has nothing to do with how you treat
14 employees, professional conduct?**

15 A. I don't think so but I don't know. It's relating
16 to this handbook. That's my understanding.

17 Q. **This is the same language you put in everything,
18 isn't it?**

19 A. Correct.

20 Q. **So when you want to affirm something, you just
21 fill in the blanks on the dates and the charges,
22 if you're going to sustain it and paragraph 2, it
23 just says all the things you considered and the
24 rest of it is pretty much boilerplate, correct?**

25 MS. ASHER: Objection.

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1 A. Yes.

2 Q. And is that your signature, by the way?

3 A. Yes.

4 Q. So there were no actual reasons given indicating
5 why you sustained it specifically, sustained the
6 proposed suspension, correct?

7 MS. ASHER: Objection. Go ahead.

8 A. Yes.

9 Q. In the middle of paragraph 2 it says, "The
10 consistency -- one of the considerations is the
11 consistency of the penalty with those imposed
12 upon other employees for the same or similar
13 offenses."

14 Do you see where I'm reading?

15 A. Yes.

16 Q. What did you do to decide that a 10-day unpaid
17 suspension was consistent, a consistent penalty
18 with penalties imposed upon other employees for
19 the same or similar offenses?

20 A. So the evidence file identified that there was a
21 proposed mediation to a letter of counseling,
22 written counseling that was denied.

23 Q. What do you mean, what was denied?

24 A. It is my understanding through the evidence file
25 that Dr. Altose at the oral reply or subsequent

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1 to the oral reply agreed to mediate the
2 suspension, remove the suspension and provide a
3 written letter of counseling which is not an
4 official disciplinary action. It's like a letter
5 of expectation.

6 Q. **Well, he said it was, by the way, but...**

7 A. And that Dr. Lisan refused to do that.

8 Q. **Okay. Can I ask you --**

9 A. Refused to accept it.

10 Q. **Why do you say that counseling is not any kind of
disciplinary action?**

11 A. I think it's like a letter of expectation. In
12 the many years that I've worked at the actual
13 formal disciplinary action starts with an
14 admonishment, reprimand, suspension, termination
15 but generally letters of written counseling
16 aren't considered disciplinary action.

17 Q. **Isn't it a fact that the mediation and the
possible negotiations that are involved in
mediation, isn't that completely irrelevant to
the decisions that are made on whether or not to
sustain the suspension?**

18 MS. ASHER: Objection. Go ahead.

19 A. If the mediation had resulted in an agreement for
20 a letter of counseling, the proposed suspension

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1 would have never come to me.

2 Once I got the letter, the actions were that
3 doctor --

4 **Q. What letter?**

5 A. I'm sorry, the evidence file with the proposal to
6 make the decision. I reviewed the evidence, you
7 know, the facts in the case as I read them were
8 that there were allegations by several women,
9 numerous, four at the beginning, two at the later
10 end including a police report, including entry
11 into an OR, issues with patient safety and based
12 on that, there needed to be a suspension.

13 **Q. Well, but you sustained a 10-day suspension
14 without pay?**

15 A. Yes, I did.

16 **Q. Okay. Well, why is -- if your own chief of staff
17 recommended counseling, a counseling approach,
18 that would be far -- you didn't even consider
19 that disciplinary? Is what you're telling me?**

20 A. Correct.

21 **Q. You could have, you could have rejected the
22 suspension and suggested counseling, too, or
23 ordered counseling, right?**

24 A. I could have.

25 **Q. Why didn't you do that?**

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1 A. Because, as I said, Dr. Lisan was asked by his
2 supervisor on a couple -- on several occasions as
3 well as in writing, as we discussed earlier, he
4 was in fact asked by a couple nurses to stop, and
5 he failed. He didn't show remorse. He didn't
6 say, acknowledge that he, his behavior was not
7 appropriate and in an OR setting, which if any of
8 us were in the OR, I would hope that none of us
9 would want someone feeling threatened or feeling
10 like they had to leave the OR and get someone to
11 come in because someone else had entered the OR
12 that wasn't even involved in the case, and I
13 think that this is a very strong message. And
14 this, mind you, was in advance of the hashtag
15 MeToo but certainly, you know, in this era, you
16 know, sexual harassment, sexual tones, touching
17 is totally unacceptable.

18 Q. My question to you was, of course -- withdrawn.
19 The actual allegation was that he violated
20 the gag order by talking about this. Wasn't that
21 part of it?

22 MS. ASHER: Objection.
23 Mischaracterizes.

24 Q. He was ordered not to discuss it and he allegedly
25 discussed it with Karin Bonfili or somebody else?

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1 **Is that correct?**

2 MS. ASHER: Objection. Go ahead.

3 A. The, I would have to look at the actual charges
4 but I think there were the, it was conduct and
5 failing to follow supervisory orders is my
6 recollection. I don't recall anything specific
7 to the gag order.

8 Q. Okay. But the question here that you're
9 representing in this boilerplate part of the
10 letter is one of the considerations was the
11 consistency of the penalty with those imposed
12 upon other employees for the same or similar
13 offenses.

14 What did you consider or look at to see if
15 the penalty was consistent with those imposed
16 upon other employees with the same or similar
17 offenses? Did you look into that at all?

18 MS. ASHER: Objection. Go ahead.

19 A. So we have a large workforce. As I said before,
20 55-5600 employees. And Dr. Lisan is not the
21 first person that has acted inappropriately and
22 made sexual-like or inappropriate comments and in
23 consultation with employee relations we took
24 similar action compared to what we have done with
25 other employees.

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1 Q. Who did you consult with there at employee
2 relations?

3 A. It was the employee relations specialist at the
4 time. I don't know if it was Jelena then or not.

5 Q. Who?

6 A. Jelena.

7 Q. Jelena who?

8 A. She was --

9 Q. Is that a first or last name?

10 A. First name.

11 Q. How about the last name?

12 A. Something with a Z. She doesn't work here
13 anymore.

14 Q. Okay.

15 A. What I can tell you that is in my opinion, if
16 employees -- if this had been a housekeeping
17 aide, this employee would have been terminated.

18 Q. If it was a housekeeping aide?

19 A. Yes. Other employees have received more severe
20 penalty for the behaviors I saw in the evidence
21 file than Dr. Lisan received.

22 Q. Okay. Let me ask you this: What consideration,
23 if any, did you give -- withdrawn.

24 Why did you mention that he was offered and
25 he denied accepting at the mediation a

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1 **counseling? Why did you mention that?**

2 A. Because that was in the evidence file and that
3 was brought to my attention and --

4 Q. **What do you mean it was brought to your
5 attention?**

6 A. Well, it was in the evidence file, okay? So I
7 read the evidence file.

8 Q. **But why would you mention it here? What was your
9 purpose in talking about a negotiation of some
10 kind that failed to resolve the issue which
11 resulted in having to go through the process of a
12 decision? Why was that something that you felt a
13 need to talk about here?**

14 MS. ASHER: Objection.

15 Q. **What did that have to do with anything?**

16 MS. ASHER: Objection.

17 A. It, to me it's important information.

18 Q. **Okay. Tell me why.**

19 A. Because it shows to me that the agency offered a
20 mediation. It was not accepted. Dr. Lisan did
21 not accept --

22 Q. **Well, he accepted the mediation. He just didn't
23 accept the offer.**

24 A. I'm sorry. I'm sorry. He didn't accept the
25 offer. I apologize, sir.

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1 **Q. That's okay. Go ahead.**

2 A. And, you know, one of the things that I look for
3 is remorse, rehabilitability?

4 **Q. Rehabilitation?**

5 A. Rehabilitation.

6 You know, was this behavior going to stop.

7 What did we need to do to get the message
8 across to Dr. Lisan that he could not go into ORs
9 for which he had no professional business to be
10 in and initiate an inappropriate comment and
11 touch CRNAs that was putting our nation's heroes
12 at risk, our veterans.

13 **Q. So what you're telling me is that part of your
14 fact finding considerations in making your
15 decision to sustain his proposed suspension was
16 the fact that by refusing to accept an offer of a
17 counseling, he failed to show any remorse for his
18 conduct or an indication acceptable to you that
19 this wouldn't occur again?**

20 MS. ASHER: Objection.

21 **Q. Is that correct?**

22 MS. ASHER: Objection. Go ahead.

23 A. That and the comments that were made in the oral
24 reply, so.

25 **Q. The oral reply?**

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1 A. To Dr. Altose.

2 Q. There's no record made of it, was there?

3 A. Yes.

4 Q. Was it in writing?

5 A. Yes.

6 Q. Was that something that was typed up or written
7 out by hand?

8 A. I believe it was typed.

9 MS. ASHER: We produced it.

10 Q. Who provided that?

11 A. It was in the evidence file.

12 Q. Was that ever given to Dr. Lisan or his counsel?

13 A. If it was in the evidence file, I would assume it
14 would be.

15 MS. ASHER: It was given to you
16 with the initial disclosures. We gave that
17 to you many months ago actually.

18 MR. SINDELL: Yes, there were just
19 two or three documents and I don't recall
20 that that was one of your disclosures.

21 MS. ASHER: It was.

22 MR. SINDELL: But there weren't
23 two or three documents. It was a mountain.
24 I don't remember it. I'm not saying it
25 wasn't there.

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1 MS. ASHER: It sounded like you
2 were insinuating that we didn't produce it.
3 We did.

4 MR. SINDELL: I just don't
5 remember it.

6 MS. ASHER: Okay.

7 MR. SINDELL: But are you talking
8 about the Douglas factor consideration
9 worksheet?

10 MS. ASHER: That's part of it.
11 That's part of the evidence file.

12 MR. SINDELL: But this doesn't
13 deal with what he said in the Dr. Altose
14 meeting.

15 MS. ASHER: Do you want to talk
16 about this off the record? Because it has
17 to do with the document production.

18 MR. SINDELL: Okay. Let's go off
19 the record.

20 - - - -

21 (Thereupon, a discussion was had off the
22 record.)

23 - - - -

24 Q. Back on the record.

25 I may have been unclear. I accept counsel's

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1 representation that it was made part of the
2 initial disclosures. What she means by initial
3 disclosures are documents which both sides give
4 to each other after a lawsuit has been filed in
5 federal court. Okay?

6 I'm asking a different question.

7 A. All right.

8 Q. You said something about the transcript of the
9 meeting with Dr., I call it a meeting not a
10 hearing, but whatever, with Dr. Altose.

11 My question is: Were we supposed to get a
12 copy of that --

13 A. So I --

14 Q. -- at the time it came into existence and was put
15 in a file?

16 A. I don't think so because you were, you were there
17 I believe.

18 Q. Well, I might have been there but I don't know
19 what --

20 A. So what happened, so I can just tell you what I
21 know is that when I get an evidence file and
22 there has been an oral reply, someone in employee
23 relations takes notes on what happened during
24 that meeting and the comments and I read that as
25 part of the evidence file and I use that, it's

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1 not an official transcript, I shouldn't say, you
2 know, it's notes and I use that and I used the
3 comments and the statements that were made by
4 Dr. Lisan in making my decision.

5 **Q. Well, you are correct that I was there and let me**
6 **share with you that there were no notes being**
7 **taken by Dr. Altose, although he certainly**
8 **listened. The notes were being taken by Lisa**
9 **Clark who was an attorney representing the VA.**

10 She was the only person that I saw constantly
11 writing as the proceedings were going on and as
12 Dr. Lisan was speaking.

13 **You don't recall the source of the notes?**

14 A. I don't recall the source of the notes. Usually
15 it's an ELR specialist. However, I could see if
16 in fact the employee had counsel, maybe
17 Dr. Altose had counsel with Lisa Clark, so I
18 don't know.

19 **Q. I'm not objecting to counsel being present.**

20 A. Yeah. I don't know who wrote the notes. I just
21 know they were in the evidence file and I read
22 them.

23 **Q. What was it in the notes, if you can recall, that**
24 **specifically influenced you in that regard?**

25 A. What's, you know, and I'm paraphrasing because I

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1 can't remember the specifics, was that, you know,
2 discussion about inappropriate behavior and that
3 Dr. Lisan did not agree that he had done anything
4 inappropriate. You know, there was discussion
5 about whether it was sexual in nature. My
6 recollection is Dr. Altose said, you know, the
7 charges were for inappropriate conduct and that
8 that was not acknowledged either.

9 Q. **Did you know -- withdrawn.**

10 **Are you familiar with the mediation process**
11 **that is used at the VA to try to resolve these**
12 **kinds of issues? Are you familiar with that?**

13 A. Somewhat.

14 Q. **Is it your understanding that the discussions in**
15 **mediation are made part of an evidence file to be**
16 **used to determine the sanction or punishment to**
17 **be meted out in discipline to an employee if**
18 **necessary?**

19 MS. ASHER: Objection.

20 A. So I don't know the specifics. I can just tell
21 you, sir, what was in the file and I, at some
22 point I had seen, you know, that there had been,
23 you know.

24 Q. **I understand.**

25 A. And I thought it was through the oral reply that,

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1 you know, there was a discussion to, you know --
2 when I say "mediate," I don't mean like
3 mediation. I'm thinking lessen the penalty to a
4 written counseling and that's what I read in
5 these notes.

6 Q. **That came up in the mediation.**

7 A. It didn't come up in the...

8 Q. **No, it didn't. To my knowledge.**

9 **But it came up in the mediation?**

10 A. I didn't know there was a mediation, so -- or I
11 don't recall specifically.

12 Q. **I am sure that you used the word "mediation" when**
13 **you first testified to that.**

14 **In fact I think you used it several times.**

15 A. So --

16 Q. **Did you think that the meeting with Dr. Altose**
17 **was a mediation?**

18 MS. ASHER: Objection. Go ahead.

19 A. No. It was an oral reply and --

20 Q. **But I'm asking you, you used the word**
21 **"mediation." Are you going to take that back?**
22 **You didn't think it was a mediation?**

23 A. May I please clarify?

24 During the oral reply it was my understanding
25 through the notes that Dr. Altose offered, and

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1 maybe I'm using the term wrong, a mediation to a
2 lesser penalty. Not a mediation meeting, that he
3 was going to mediate the penalty to a lesser
4 degree.

5 MS. ASHER: Do you
6 mean mitigation?

7 A. Huh?

8 Q. **The mediation that --**

9 A. I might be using the wrong word. Maybe I'm --

10 Q. **There may have been some discussion --**

11 A. Remediate?

12 Q. **If I may finish.**

13 A. Sorry.

14 Q. **There may have been some discussion about sorting**
15 **it out --**

16 A. I'm sorry. Mitigate.

17 Q. **-- at the hearing.**

18 **But the mediation is not supposed to be part**
19 **of any kind of evidentiary file.**

20 A. I think maybe --

21 MS. ASHER: Objection. The
22 evidence file does speak for itself.

23 Q. **Did you know that?**

24 MS. ASHER: Objection.

25 A. I'm sorry. Could you repeat your question.

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THE NOTARY: "But the mediation is
not supposed to be part of any kind of
evidentiary file"...

4 "Did you know that?"

5 MS. ASHER: Objection. The
6 evidence file speaks for itself.

7 A. Yes. And if I may, the evidence -- I can't tell
8 you what's in the evidence file right now. We'd
9 have to pull the evidence file. I think when I
10 was saying -- and I'm, I apologize. I know
11 better. I think I met mitigation, and I
12 apologize. That Dr. Altose offered to mitigate
13 it to a lower level.

14 Q. But that came up in the mediation.

Okay. We'll have to take a look at that.

16 I'll just have to take a look at that but
17 you're -- okay. We had no opportunity to respond
18 to that at all.

19 Let me ask you this: Do you think that
20 Dr. Altose, who is a responding party, should
21 have recused himself from conducting that
22 particular hearing?

23 A. No.

24 Q. Okay. Now I don't think this has ever been
25 marked. This is going to be Exhibit 79.

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1

- - - -

2

(Thereupon, Plaintiff's Exhibit 79, "Response
of Dr. Ron Lisan to the Proposed Suspension
at the Request of Dr. Raphaely (5-10-17)" was
marked for purposes of identification.)

6

- - - -

7

Q. It is what we gave to Dr. Altose. The hearing
date was May 11, 2017. That's the day before
that this was prepared, just so you know.

10

A. I see that.

11

Q. We asked him to recuse himself and so forth.
But I assume that this was part of the
evidence file?

14

A. Yes, I believe it was.

15

Q. Do you remember it?

16

A. I do.

17

Q. Okay.

18

A. Based on the last statement that we had already
talked about.

20

Q. Did you understand that a new panel was being
formed to reinvestigate the prior EEO report?
Did you know that?

23

A. I may have.

24

Q. Well, it's right here in the document.

25

A. Okay. I knew.

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1 Q. It's in here.

2 Do you think that the matter should have been
3 continued until a hearing -- excuse me.

4 Until a reinvestigation had taken place?

5 A. No.

6 Q. Did you know that Mr. Kafer never discussed with
7 Dr. Lisan the specifics of any of the initial
8 complaints of the four CRNAs? Did you know that?

9 A. Yes.

10 Q. Did you think that was appropriate?

11 MS. ASHER: Objection. Go ahead.

12 A. I think if you read his report, and I can't
13 remember the specifics, but he addresses why he
14 did or did not do that. I can't recall the
15 specifics but I think it's in there.

16 Q. Okay. Did you know that that was one of the
17 reasons why any reinvestigation was created by a
18 panel, a new panel?

19 MS. ASHER: Objection.

20 A. Not to my knowledge.

21 Q. Well, why would it have to be reinvestigated?

22 MS. ASHER: Objection.

23 Q. Did you wonder about that when you saw that, when
24 we asked for a continuance until the
25 investigation was complete?

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1 MS. ASHER: Objection.

2 A. I reviewed the evidence file. Based on the facts
3 in the evidence file, it was clear that Dr. Lisan
4 failed to leave the women alone. He continued to
5 approach them. He continued to enter ORs, he
6 called them at home months after he had been
7 asked to stop and he continued.

8 Q. Did you see any details of what Dr. Lisan said to
9 explain these issues of what he supposedly said?

10 MS. ASHER: Objection. Vague. Go
11 ahead.

12 A. He responded in the oral reply. I read his oral
13 reply.

14 Q. An investigation was done where he was given an
15 opportunity to state the context of the
16 allegations that were made against him.

17 Did you know that?

18 MS. ASHER: Objection.

19 A. I don't understand the question. I'm sorry.

20 Q. Did you know that after this whole meeting with
21 Dr. Altose an investigation was made and
22 conducted by Leshelle Reece after this meeting of
23 May 11, 2017?

24 A. That's the one that was much after, like a year
25 later, right?

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1 Q. A year later?

2 A. Am I thinking of the '18? The allegations in
3 '18?

4 Q. No. Leshelle Reece did her own investigation
5 with a new panel and that occurred after, I don't
6 know exactly when off the top of my head but it
7 was after the meeting of May 11, 2017.

Did you know that?

9 MS. ASHER: Objection. Go ahead.

10 A. This is a EEO. This has nothing to do with the
11 discipline -- it says here that Ms. Reece is
12 reinvestigating the prior EEO report. Not the
13 allegations of action by Dr. Lisan.

14 Q. What? Look. The proposed suspension is based
15 upon the alleged misconduct on the part of
16 Dr. Lisan, right?

17 A. Yes.

18 Q. Including all kinds of allegedly inappropriate if
19 not sexually harassing remarks. Isn't that what
20 it was? I mean we can look at the proposed
21 suspension. That's what it included. It was the
22 exact EEO investigation that was made by
23 Mr. Kafer. They did it all over again.

24 MS. ASHER: Objection.

25 Q. Did you know that?

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1 MS. ASHER: Objection.

2 A. I can't recall right now, sir.

3 Q. Well, it says here Dr. Altose is, and this is
4 exhibit, which one?

5 A. 79.

6 Q. Exhibit 79.

7 "Dr. Altose is or should be aware that a new
8 panel is being formed (per Leshelle Reece) to
9 reinvestigate the prior EEO report, a
10 reinvestigation currently underway. The proposed
11 suspension is based upon the conclusions reached
12 in the original EEO investigation. As Dr. Altose
13 knows, that investigation is currently
14 incomplete. Additionally, with the hearing
15 currently scheduled for this Thursday, May
16 11th" -- oh, this is where she had him working
17 all night before the hearing.

18 So it was incomplete. The very one you were
19 dealing with. It says it right here.

20 Do you think that you should have been
21 making -- first of all, do you think that you
22 should, he should have shouldn't -- withdrawn.

23 Don't you think the hearing before Dr. Altose
24 should have been continued until the
25 investigation of this EEO report was complete?

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1 MS. ASHER: Objection.

2 Q. Don't you think that would be fair to Dr. Lisan?

3 MS. ASHER: Objection. Go ahead.

4 A. No. The decision was based on the reports of
5 contact from the people in January, the letters
6 from Dr. Raphaely asking, and counselings asking
7 Dr. Lisan to stop, the police report in March and
8 the report from Elaine Costanzo saying that
9 Dr. Lisan was calling her at home. That's what I
10 based my decision on.

11 Q. Okay. Well, let's see what you based your
12 decision on. This will be, I'm going to end up
13 remarking this, but so what. This is Number 80
14 again.

15 - - - -

16 (Thereupon, Plaintiff's Exhibit 80, 3/20/17
17 Raphaely letter to Lisan, was marked for
18 purposes of identification.)

19 - - - -
20 Q. You've seen this, haven't you, proposed
21 suspension?

22 A. Yes.

23 Q. Okay. This is what was being proposed that you
24 were reviewing, correct?

25 MS. ASHER: Objection.

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1 A. Yes.

2 Q. I'm sorry?

3 A. Yes.

4 Q. Okay. Take a look at the second page of it.

5 "Inappropriate Conduct." Roman Numeral II,
6 right?

7 A. Yes.

8 Q. Every one of these, A, B, C, D, E, all of those
9 are going back to January, Ms. Foster, the
10 initial complaint allegedly by her, the date of
11 it, Karin Bonfili, January 5th and January 6th,
12 Elaine Costanzo March 7th, all of those were the
13 initial complaints which was part of the proposed
14 suspension, correct?

15 A. Yes.

16 Q. That's what was being reinvestigated. Didn't you
17 know that?

18 MS. ASHER: Objection.

19 A. These allegations in my opinion and when I read
20 it stand for themselves. They are individual
21 reports of contact. The one is considered a
22 police report and this is describing of
23 inappropriate behavior for which Dr. Lisan was
24 asked to stop and he did not.

25 Q. But they're referring to events that occurred way

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1 before he got any kind of -- not way before, but
2 before he even got a checklist, he even got an
3 order not to talk about it.

4 It's not just based upon a failure to follow
5 orders which is in number I?

6 MS. ASHER: Objection.

7 Mischaracterizes.

8 Q. Number I has to do with the failure to follow
9 orders. Number II has to do with the conduct
10 itself which was being reinvestigated.

11 MS. ASHER: Objection.

12 Mischaracterization. Go ahead.

13 Q. Did you know that?

14 A. Yes, sir.

15 Failure to follow orders on January 10th, the
16 checklist was provided.

17 Q. What was the inappropriate conduct? They're
18 claiming that I'm not -- on Thursday January 5th
19 discussing a case with you that you were assigned
20 to work the next day, so this is January 5th.

21 A. I'm referring to particularly D and E.

22 Q. But it's all in here.

23 A. D and E alone result -- in my opinion result in a
24 10-day suspension and frankly I could have
25 terminated him based on prior actions that we've

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1 taken against other people in the hospital.

2 **Q. You're not going to go off into a long thing now.**

3 What I want to understand from you is why you
4 didn't -- withdrawn.

5 Mr. Kafer never spoke as a fact finder to
6 Dr. Lisan about some of these allegations and the
7 proposed suspension; isn't that correct?

8 MS. ASHER: Objection. Go ahead.

9 **A. The document --**

10 **Q. Isn't that correct?**

11 **A. The document we just looked at explains his**
12 reasoning and I took his reasoning into account.

13 **Q. Whose reasoning?**

14 **A. Mr. Kafer's. I don't know what exhibit that was.**

15 **Q. Mr. Kafer did not comment upon many of these**
16 allegations. He never spoke to Dr. Lisan about
17 it?

18 **A. May we please revisit that exhibit?**

19 **Q. No. I'm satisfied with it.**

20 All right. My question to you is: How could
21 you endorse sustaining a suspension without
22 knowing what the result of a reinvestigation of
23 the same matter was?

24 MS. ASHER: Objection.

25 **Q. Including, including the matter of the police**

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1 report and touching allegedly the back of Karin
2 Bonfili and all of that?

3 MS. ASHER: Objection.

4 Q. How could you, how could you reach a conclusion
5 stating something when you knew all of that was
6 being reinvestigated?

7 MS. ASHER: Objection.

8 A. How could I have not is my response.

9 Q. Oh, great.

10 A. We have an anesthesiologist that is highly
11 professional, that should be professional and
12 should not be going into operating rooms that he
13 had no business going into that he had been told
14 not once, not twice but at least three times to
15 not do and he went into an operating room active
16 with a patient, spoke to someone, touched the
17 CRNA, a physician came in, a separate physician
18 came in, asked him to leave. He refused to
19 leave. Another physician came in to excuse the
20 CRNA.

21 That alone is how I made this decision to
22 suspend him.

23 Q. And that alone was never asked about to
24 Dr. Lisan. That is based upon a one-sided report
25 by one CRNA and maybe a couple of other witnesses

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1 without any contact or question being addressed
2 about it to Dr. Lisan.

3 Did you know that?

4 MS. ASHER: Objection.

5 Mischaracterization.

6 A. There was a police report.

7 Q. Did you know that Dr. Lisan was never given the
8 opportunity to address those issues that you were
9 so interested in sustaining his suspension about?

10 Did you know that?

11 MS. ASHER: Objection.

12 Characterization.

13 A. I believed the police report that was done by the
14 police detective --

15 Q. We're --

16 MS. ASHER: We're going to take a
17 break. Can we take a break? Steve, can we
18 talk outside?

19 MR. SINDELL: You and me?

20 MS. ASHER: Yes. Let's take a
21 minute and talk outside.

22 MR. SINDELL: No. We're going to
23 talk right here on the record.

24 MS. ASHER: No, we're not going to
25 talk on the record, Steve. I'd like you to

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1 step outside.

2 MR. SINDELL: So take your break.

3 MS. ASHER: No. I am calling a
4 break. We are going to talk off the
5 record.

6 MR. SINDELL: You're in trouble
7 here I think because we've got a situation
8 where a decision was made knowing that
9 Dr. Lisan had never had an opportunity to
10 present his side.

11 MS. ASHER: Steve, you want to do
12 this on the record, let's do this on the
13 record.

14 MR. SINDELL: Yes, on the record.

15 MS. ASHER: You are being
16 extremely rude and disrespectful to this
17 witness. I can tell everyone in this room
18 is a little bit agitated. I think it's in
19 our best interest --

20 MR. SINDELL: All right. Let's
21 take a break.

22 MS. ASHER: -- to take a break
23 right now and I would expect that when we
24 return, that this go a lot faster if you
25 can speak to the witness in a more

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1 respectful and less rude manner.

2 MR. SINDELL: I don't --

3 MS. ASHER: Understood?

4 MR. SINDELL: I understand what
5 you said. Now let me speak.

6 MS. ASHER: Okay.

7 MR. SINDELL: Where do you think
8 that because a witness is, it's being
9 pointed out to a witness that something
10 that appears to be extremely unfair or may
11 be unfair is rude and unprofessional? It
12 is not unprofessional because it's damaging
13 to your client.

14 MS. ASHER: And I'm not saying
15 that.

16 MR. SINDELL: It is not rude
17 because it's damaging to your client.

18 MS. ASHER: Steve, I'm saying your
19 tone is rude, the fact that you are leaning
20 across the table and --

21 MR. SINDELL: I am not leaning --

22 MS. ASHER: -- that you are
23 shaking your hand in my witness' --

24 MR. SINDELL: I am not leaning
25 across the table.

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1 MS. ASHER: All right. Let's take
2 a break, then.

3 MR. SINDELL: But you've been
4 standing up during this --

5 MS. ASHER: Yes. Because I asked
6 for a break and I asked us to step outside.

7 MR. SINDELL: You got it. Take a
8 break. Go ahead. When do you want to come
9 back, ten minutes?

10 MS. ASHER: Five minutes.

11 - - - -

12 (Thereupon, a recess was had.)

13 - - - -
14 Q. All right. I'd like you to, what exhibit do you
15 have?

16 A. I have 80 and 79.

17 Q. 80 is, which one is 80, the proposed?

18 A. Yes.

19 Q. Okay. I'd like you to look at the first page,
20 Number 1, "Proposed Suspension."

21 Do you see it?

22 A. Yes.

23 Q. And it says on Friday, January -- second
24 paragraph in here or third, I guess.

25 "On Friday, January 6th, 2017"?

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1 A. Yes.

2 Q. "I was informed that you may have engaged in
3 inappropriate behavior of a sexual nature
4 involving female coworkers."

5 Do you see that?

6 A. Yes.

7 Q. Do you think that Friday January 6th, 2017 was a
8 correct date when she was informed, "she" being
9 Dr. Raphaely?

10 A. I don't know. It was around that date, but...

11 Q. Yeah. It was January 10th according to the
12 testimony of Dr. Bearss. Including a written
13 statement --

14 MS. ASHER: Objection.

15 Q. -- to that effect.

16 MS. ASHER: Objection.

17 Q. I assume you didn't, you weren't aware of that
18 because his deposition was just taken recently.

19 A. Okay.

20 Q. All right. So you accepted it as true, the
21 January 6th, 2017 date, didn't you?

22 A. I did.

23 Q. And that was the date you got your letter?

24 MS. ASHER: Objection.

25 Q. Did you know that? It was dated January 6th?

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1 A. Yes. Okay.

2 Q. And it was sent by email.

3 A. Okay.

4 Q. You're familiar with the concept of retaliation,
5 aren't you?

6 A. Yes.

7 Q. Okay. Retaliation means that after somebody
8 makes a complaint about some form of unfair
9 employment practice like discrimination or
10 something of that nature that it's illegal to
11 retaliate against them for making that kind of
12 complaint, right?

13 A. Yes.

14 Q. Okay. But you'd have to know that a complaint
15 was made in order to retaliate against somebody
16 for doing that, making that complaint, right?

17 A. Yes.

18 Q. All right.

19 Did it ever occur to you that the date of
20 January 6, 2017 was put in there to avoid the
21 concession that she knew about the January 6th
22 complaint of 2017, "she" being Dr. Raphaely
23 before she took action against Dr. Lisan?

24 MS. ASHER: Objection.

25 Mischaracterization. Go ahead.

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1 A. Further in the document it says, "On Wednesday,
2 January 4, Ms. Jessica Foster" and then on charge
3 II, "Inappropriate Conduct," B --

4 Q. **Where are you reading from?**

5 A. I'm on page, the second page. If you'd flip the
6 page, "Inappropriate Conduct," it says, "On
7 Wednesday, January 4," and then it says, "On
8 Thursday, January 5th" and then it says, "On
9 Friday, January 6th" so I guess when I read that,
10 I didn't take issue with on Friday, January 6th.

11 Q. **All right. January 4th, January 5th and January
12 6th -- withdrawn.**

13 **Okay. You assumed all of that as true,
14 didn't you?**

15 MS. ASHER: Objection. Go ahead.

16 A. Yes. It comes from the employee labor relation
17 section and I assume it's technically accurate.

18 Q. **Did you assume also that the context of the
19 content of Part A is true?**

20 A. Where are you at, sir, please.

21 Q. **Page 2, second page. Did you assume that was
22 true, that Dr. Lisan said all the things that are
23 alleged there?**

24 A. I did.

25 Q. **In the context in which they're presented here?**

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1 A. Yes.

2 Q. You thought that was true; is that right?

3 A. I believed it was there. As I previously said,
4 you know, I really focused in on D and E in
5 making my decision.

6 Q. I asked you about A. Are you going to answer me
7 or not?

8 A. I said yes.

9 Q. Okay. So you assumed it was true, correct? Yes?

10 A. Yes. I don't know how many more times I need to
11 say it.

12 Q. How about B? Did you assume that was true, too,
13 and in context?

14 A. Yes.

15 Q. Okay. C, same answer?

16 A. Yes, sir.

17 Q. You assumed that was true, too?

18 A. Yes.

19 Q. In fact you focused on that one, right?

20 A. Not on C.

21 Q. Not on C? Okay.

22 But you assume C was true?

23 A. Yes.

24 Q. Okay. D was Elaine Costanzo.

25 You said -- was D one of them that you

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1 **emphasized? You thought you focused on?**

2 A. D and E, yes.

3 Q. D and E, okay. So you assumed that D was true as
4 well?

5 A. Yes.

6 Q. And E, the whole incident in the operating room
7 on March 8th?

8 A. Yes.

9 Q. Did you assume all that was true?

10 A. Yes, sir.

11 Q. Now did you know -- withdrawn.

12 I don't see anything in here involving
13 Dr. Lisan's replies to any of these things.

14 Did you receive any information as to exactly
15 what Dr. Lisan's explanation and response was to
16 each one A, B, C, D and E?

17 MS. ASHER: Objection. Go ahead.

18 A. So this was the proposed suspension.

19 Q. No. Answer my question.

20 A. And -- I'm trying, please.

21 And my understanding of how this works is
22 that Dr. Lisan had the opportunity to present to
23 Dr. Altose his response for each of these
24 allegations during the oral reply.

25 Q. Okay. Do you recall his reply?

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1 A. That's the notes that I referred to when I read,
2 when I made my decision.

3 Q. Well, you told me you didn't see any remorse on
4 his part?

5 A. Yes.

6 Q. But I want to know if there's anything in the
7 notes that you read from the meeting with
8 Dr. Altose that address in detail the context and
9 circumstances from Dr. Lisan's point of view of
10 specifically A, B, C, D and E of the proposed
11 suspension?

12 A. I would have to review that document again.

13 I do not recall that Dr. Lisan took the
14 opportunity to review A, B, C, specifically and I
15 also didn't necessarily see it in the response of
16 Dr. Lisan proposed suspension that would be
17 Exhibit 79 dated 5/10/17.

18 Q. But you did see that it was under reinvestigation
19 with a new panel. You saw that?

20 A. Yes.

21 Q. But you didn't want to wait for any information
22 coming from the new panel?

23 MS. ASHER: Objection.

24 Q. Is that correct? Before you made a decision?

25 MS. ASHER: Objection.

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1 A. I made a decision with the information that I
2 had.

3 Q. Which did not include the information about
4 Dr. Lisan's side of it from Dr. Lisan based on
5 the investigation that Leshelle Reece was
6 conducting, correct?

7 MS. ASHER: Objection. Go ahead.

8 A. Dr. Lisan had the opportunity to provide his side
9 during the oral reply and through his written
10 response.

11 Q. And in answer to my question, you did not wait to
12 see what the investigation, the reinvestigation
13 resulted in, did you?

14 A. Correct.

15 Q. And you don't think you should have done that,
16 either?

17 MS. ASHER: Objection.

18 Q. You just thought you should read what's in the
19 file at the time and not wait until the full
20 investigation was over; is that what you think?

21 MS. ASHER: Objection. Go ahead.

22 A. I made the decision I made.

23 Q. Okay. Yes, you did.

24 All right. Now you were supposed to, there
25 are timetables for your decision to respond to

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1 the suspension, proposed suspension; is that
2 correct? You had a certain time limit?

3 A. Yes.

4 Q. It's 30 days from the date of the hearing before
5 Dr. Altose; is that correct?

6 A. I guess. I don't know the specifics, but okay.

7 Q. That doesn't sound -- well, do you have any
8 reason to disagree with that?

9 A. No.

10 Q. Did you comply with that 30-day period?

11 The date is May 11th of the actual hearing
12 date. May 11th, 2017.

13 Your decision was --

14 A. June 20th.

15 Q. Yes. It says June 20 but in fact you didn't sign
16 it until at least I think five to seven days
17 later than that. Did you know that?

18 A. No.

19 Q. Okay. Well, now, what would -- well, let me see.
20 I'm going to hand you, now you try to keep up
21 with these obligations about dates, don't you?

22 A. I relied on the employee labor relations
23 specialist to keep up with the dates.

24 Q. Well, that's their job, right?

25 A. Yes.

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1

- - - -

2

(Thereupon, Plaintiff's Exhibit 81, 6/15/17

3

Metzger letter to Sindell, was marked for
purposes of identification.)

5

- - - -

6

Q. This is Plaintiff's Exhibit 81.

7

I'm not interested in asking you any
questions about the contents specifically of this
document. Only that it's dated June 15, 2017,
correct?

10

A. Yes.

12

Q. It comes from Lyons, New Jersey, the ORM, Office
of Resolution Management, Department of Veterans
Affairs, correct?

15

A. Yes.

16

Q. And it's the notice of acceptance of Dr. Lisan's
EEO complaint against officials of the Louis
Stokes Cleveland Veterans Administration Medical
Center in Cleveland, Ohio, isn't it?

20

A. Yes.

21

Q. Now, if you will be kind enough to turn to the
second last page, it appears that you were sent a
copy of this; is that correct?

24

A. Yes.

25

Q. Do you remember receiving it?

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1 A. I think so, yes.

2 Q. So even though you were beyond the deadline for
3 getting in your reply within a very short period
4 of time after you found out that the Department
5 of Veterans Affairs accepted Dr. Lisan's EEO
6 complaint against the Cleveland VA, you turned
7 around and affirmed his suspension at the
8 earliest on June 20th, 2017, correct?

9 A. Yes.

10 Q. So you really weren't going to make a decision
11 about it until you found out that the VA accepted
12 his complaint for action; is that correct?

13 MS. ASHER: Objection.

14 A. I'm sorry. I don't understand the question.

15 Q. Is there any relationship between June 15th that
16 you received the notice of acceptance of
17 Dr. Lisan's complaint by the EEO in New Jersey
18 and within five days at the most you decided to
19 suspend him?

20 MS. ASHER: Objection. Go ahead.

21 Q. To affirm his suspension. Is there any
22 relationship between those two?

23 MS. ASHER: Objection. Go ahead.

24 A. No.

25 Q. You think it's just a coincidence?

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1 A. Often when employees are proposed with
2 disciplinary action, they exercise their right to
3 file an EEO.

4 Q. I'm sorry. We're not talking about the right to
5 file it.

6 A. Or accept. It was accepted.

7 Q. Well, not everything is accepted by the EEO, is
8 it?

9 A. The vast majority.

10 Q. There's no relationship between your action and
11 that acceptance?

12 A. No.

13 Q. Is that your testimony?

14 A. Yes.

15 Q. Have you ever heard a detailed rendition of
16 Dr. Lisan's responses to A, B, C, D and E in the
17 proposed suspension? Have you ever heard --

18 MS. ASHER: Objection.

19 Q. -- them or read them?

20 MS. ASHER: Objection. Go ahead.

21 A. Only through what you provided as his counsel and
22 what was, he and you stated at the oral reply.

23 Q. Wasn't there -- withdrawn. There was a --
24 withdrawn.

25 To your knowledge was there a report made by

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1 **the new panel that reinvestigated this matter?**

2 MS. ASHER: Objection. Go ahead.

3 A. I don't recall.

4 Q. Wouldn't that be something you'd receive?

5 A. I may have.

6 Q. Can you think of any reason why it wouldn't be
7 available to you?

8 A. No.

9 Q. Did you ever seek it out and find out what the
10 new panel had to say about it?

11 A. No.

12 Q. You did know at the time that you sustained the
13 proposed suspension that the claims of sexual
14 harassment against Dr. Lisan were rejected by the
15 EEO; is that correct?

16 MS. ASHER: Objection.

17 A. Yes, but that's not what the action was based on.

18 Q. I didn't -- it wasn't based on that? Is that
19 what your testimony is? Your action was not
20 based on the results of the EEO investigation?

21 A. It was based on inappropriate conduct.

22 Q. Oh, it wasn't based on sexual harassment; is that
23 correct?

24 A. Yes.

25 Q. It was based on inappropriate conduct; is that

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1 right?

2 A. Yes.

3 Q. I'm sorry. I couldn't hear you.

4 A. Yes. Sorry.

5 Q. Thank you.

6 MS. ASHER: She has to hear you.

7 A. It's hard for me to hear him sometimes.

8 Q. I'm going to have you -- this is previously
9 marked Exhibit 31. Okay? And it's actually
10 Exhibits 31 through 34, so if you'll turn to 34.
11 That's several pages in, it's. I'm looking
12 at the reports of contact. See? Right here?

13 A. Yes.

14 Q. You got it. Okay. This is, turn to the second
15 one in after 34. Jessica Foster. You see it?

16 A. Yes.

17 Q. Okay. Let's go over this. Let me just ask you:
18 Did you ever read this report of contact as part
19 of your review of this case in your decision to
20 sustain the suspension of Dr. Lisan?

21 A. It was part of the evidence file. Yes.

22 Q. Well, was this a factor in the decision you made
23 to suspend him?

24 A. While I took this into consideration, as I've
25 said, I really focused in on the two March

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1 incidents more so than these incidents because
2 Dr. Raphaely -- these were given and then
3 Dr. Lisan was asked to stop so, yes, I did read
4 them but they were not my sole reason for making
5 the decision.

6 **Q. Okay. I didn't ask you if they were the sole
7 reason, and I understand that you read them.**

8 You said you considered them but didn't give
9 them as much weight as other parts of the file;
10 is that correct?

11 **A. Yes.**

12 **Q. Well, let's take a look at this since you
13 considered it and weighed it.**

14 It says, "On January 4th, 2017," this is
15 Jessica Foster's report, "I was on call with
16 Dr. Lisan, stopped by his office to sign out to
17 him at the end of my shift. Dr. Lisan stated he
18 had two things to tell me. Then asked me to
19 close the door of the office."

20 Do you believe that's what happened?

21 **A. I have no reason to doubt Ms. Foster.**

22 **Q. Okay. Do you know what Dr. Lisan said about that
23 in the reinvestigation?**

24 MS. ASHER: Objection. Go ahead.

25 **Q. Do you know?**

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1 A. He denied, I think.

2 Q. **Denied what?**

3 A. There was -- I should say on some of the,
4 somewhere I saw something that Dr. Lisan may have
5 denied. I don't know.

6 Q. **You really don't know what he denied
specifically, do you?**

7 A. No.

8 Q. "The first thing was that another physician was
9 going to be covering his call overnight. The
10 second part of the conversation started with 'I'm
11 not trying to hit on you, ask you out or have sex
12 with you, but I would,'" end quote.

13 14 Okay? You see that in quotes?

15 A. Yes.

16 Q. Now, that's not a threat of any kind, is it?

17 MS. ASHER: Objection. Go ahead.

18 A. No.

19 Q. All right. Do you have any idea what Dr. Lisan's
20 response about that claim was from Jessica
21 Foster? Do you know?

22 A. No.

23 Q. Okay. Do you know that during the
24 reinvestigation he gave his side of what he
25 claimed was said there and the context. Did you

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1 know that?

2 A. Okay. Why wasn't, why didn't he give it at the
3 oral reply?

4 Q. I get to ask the questions.

5 A. I'm sorry.

6 Q. And you get to answer them.

7 A. I apologize.

8 Q. "Dr. Lisan then proceeded to tell me that he saw
9 similarities" well, let's just take that
10 statement.

11 "I am not trying to hit on you, ask you out
12 or have sex with you, but I would."

13 Let's just assume he said that just for our
14 discussion's sake. Okay? Because you believed
15 it anyway?

16 A. Yes.

17 Q. How egregious is that in terms of sexual
18 harassment?

19 A. Pretty egregious.

20 Q. Oh, that's pretty egregious, huh? Is it?

21 MS. ASHER: Objection.

22 Q. Is it a proposition to have sex with her? No, it
23 isn't, is it?

24 MS. ASHER: Objection. You can
25 answer.

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1 A. Can I put anything in context or not? I don't --

2 Q. You weren't there to put it in context and you
3 don't know what Dr. Lisan said about it; is that
4 correct?

5 A. That's correct.

6 Q. So rather than try to put it in context when you
7 don't know the context, or tell me what Dr. Lisan
8 said about it, which you also don't know, I'm
9 asking you to take it at face value.

10 Do you believe that that's an egregious
11 remark to make constituting sexual harassment
12 with Jessica Foster, yes or no?

13 A. I do, yes.

14 Q. Okay. And how egregious is it? Very egregious
15 or mildly?

16 MS. ASHER: Objection. Go ahead.

17 A. The middle.

18 Q. Oh, middle, okay.

19 Well, is it a proposition?

20 MS. ASHER: Objection. Go ahead.

21 Q. Is he propositioning her?

22 A. It's a leading proposition.

23 Q. Is there a quid pro quo in there?

24 A. But I would --

25 Q. Well, it sounds like for some women it might even

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1 be a compliment.

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2 MS. ASHER: Objection.

3 A. Clearly not.

4 | Q. Why not?

5 MS. ASHER: Objection.

6 Q. Some women might say that he's telling her he
7 found her attractive. Isn't that possible?

8 MS. ASHER: Objection.

9 A. Not in 2017.

10 Q. Well, how can you speak for all women in 2017, in
11 2005 or in 1980? How can you speak for all
12 women?

13 MS. ASHER: Objection.

14 Q. Anytime?

15 MS. ASHER: Objection. It's an
16 inappropriate question.

17 MR. SINDELL: What's inappropriate
18 about it?

19 MS. ASHER: Don't raise your voice
20 to me, Steve.

21 MR. SINDELL: We're talking about
22 an accusation of sexual harassment which
23 she has defined as moderately egregious and
24 you're telling me it's inappropriate to ask
25 her about what all women would think about

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1 it or what some women might think otherwise
2 about it? Do you really think that's an
3 improper question?

4 MS. ASHER: I do.

5 MR. SINDELL: Okay. Then object
6 to it.

7 MS. ASHER: And I did.

8 MR. SINDELL: You did more than
9 that.

10 MS. ASHER: You may answer.

11 **Q. But, okay.**

12 Let me ask you: Isn't it conceivable to you
13 in any year including 2019 that some women might
14 actually find that as a compliment?

15 MS. ASHER: Objection.

16 A. Me personally, no.

17 **Q. Okay. I understand that.**

18 So if it was offensive to you personally if
19 something like that were to occur, you would say
20 I don't appreciate that or that makes me
21 uncomfortable or please don't talk that way to
22 me, wouldn't you?

23 MS. ASHER: Objection.

24 A. It depends. If President Trump, my ultimate boss
25 said that, I might not.

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1 In this case, it was an attending physician
2 saying something to a CRNA. She may not have
3 felt comfortable saying anything.

4 **Q. He was not her boss, and you know that, don't**
5 **you?**

6 MS. ASHER: Objection. Go ahead.

7 A. They are in the operating room together and when
8 they were in the operating room, the
9 anesthesiologist directs the CRNA how to work.

10 **Q. It doesn't sound like they were in the operating**
11 **room. It sounds like --**

12 A. No, but at times they are so that is their
13 relationship.

14 **Q. Okay. So he's her supervisor in the operating**
15 **room and that makes it more intimidating to her.**
16 **Is that what you're saying?**

17 A. It may.

18 **Q. It may, right. Did you know that they kidded and**
19 **joked about various things of a sexual**
20 **implication over the years? Did you know that?**

21 MS. ASHER: Objection. Go ahead.

22 A. I know that she was concerned enough to put a
23 report of contact down.

24 **Q. But she wasn't concerned enough to tell him that**
25 **it offended her, was she?**

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1 MS. ASHER: Objection.

2 Q. At the time?

3 A. She may have been afraid.

4 Q. Does it say she was afraid?

5 A. It does not.

6 Q. Is there anything about that statement that would
7 put somebody in fear on a reasonable basis?

8 MS. ASHER: Objection. Go ahead.

9 A. The last statement says, "I just feel I need to
10 come forward at this time because the current
11 situation has made me feel extremely
12 uncomfortable to be at work."

13 Q. That's about her feeling, not what she said,
14 okay?

15 But my question is: What on Earth would
16 prevent her from saying to Dr. Lisan "that
17 suggestion makes me uncomfortable," if it really
18 did?

19 MS. ASHER: Objection.

20 Q. What would prevent her from doing that?

21 MS. ASHER: Objection. Go ahead.

22 A. Fear. Uncomfortableness.

23 Q. But she doesn't express fear?

24 A. She reported it to her supervisor. She reported
25 it to the service chief.

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1 Q. I know that but that's not my question but we'll
2 not belabor that.

3 "Dr. Lisan then proceeded to tell me that he
4 saw similarities between my marriage and his,
5 that I don't necessarily talk about my husband
6 the same way as other people do and that he
7 wanted far too -- and that he wasted far too many
8 years in his own unhappy marriage."

9 Okay?

10 Is that sexual harassment?

11 A. No.

12 Q. It may be an inappropriate comment as she felt
13 it?

14 A. Yes.

15 Q. Okay. It wouldn't be for everybody. It depends
16 on their relationship, right?

17 MS. ASHER: Objection.

18 A. Can't comment.

19 Q. Why can't you? If somebody's a personal friend
20 and they talk about those kinds of things all the
21 time, then it wouldn't be offensive to that kind
22 of a relationship; is that correct?

23 MS. ASHER: Objection. Go ahead.

24 A. I can't put myself in that position.

25 Q. Why not?

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1 A. Because I'm in a happy marriage so.

2 Q. So you can't know anything about an unhappy
3 marriage?

4 A. I guess I don't.

5 Q. Oh, you know what? This isn't. I think that's a
6 flip answer, but let me ask it again: Okay?

7 My question to you is: Whether or not that's
8 an offensive or inappropriate remark would depend
9 upon the relationship between the speaker and the
10 recipient of it, in this case Dr. Lisan and
11 Ms. Foster, wouldn't it?

12 MS. ASHER: Objection. Go ahead.

13 A. Okay.

14 Q. What do you mean okay? Isn't that true? It
15 wouldn't be inappropriate for anybody in the
16 world; it would depend on the relationship of the
17 people?

18 A. Okay. It depends on the relationship, yes.

19 Q. Thank you. All right. She says, "I was
20 completely appalled at the context of the
21 conversation and it made me extremely
22 uncomfortable."

23 Okay? Well, let's assume that's true, okay?

24 MS. ASHER: Objection.

25 A. Yes.

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1 Q. If she was appalled and uncomfortable, you're
2 saying she was too afraid to say I'm
3 uncomfortable about that? I'd rather not talk
4 about that? I don't like that subject matter?
5 Could we talk about something else?

6 She was afraid to say that? Is that what
7 you're positng?

8 MS. ASHER: Objection. Go ahead.

9 A. Yes.

10 Q. Without knowing anything about their prior
11 communications or relationship, you posit that
12 she was afraid to tell him that she was
13 uncomfortable?

14 MS. ASHER: Objection. Go ahead.

15 A. Yes.

16 Q. But you don't know that. That's pure speculation
17 on your part that she was afraid?

18 MS. ASHER: Objection. Go ahead.

19 A. She was uncomfortable enough to report it to her
20 supervisor.

21 Q. Which isn't my question.

22 A. And the -- okay.

23 Q. It isn't my question.

24 A. I'm sorry.

25 Q. I know she reported it. And I know that she was

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1 uncomfortable enough supposedly to report it or
2 at least she claims that.

3 That isn't my question.

4 My question has to do with it is incumbent
5 upon the recipient of the unwelcome remark to say
6 something about it, just what we read in
7 Mr. Kafer's report. Isn't it incumbent upon her
8 under those circumstances to say something about
9 it? A policy that you yourself said you agreed
10 with?

11 A. She should have. She did not.

12 Q. Thank you.

13 "At this point I responded by defending my
14 husband in marriage trying to end the
15 conversation -- oh, trying to end the
16 conversation as rapidly as possible." Okay?

17 "Then as I was leaving" to -- I'm sorry, "I
18 was leaving, he stated again that another
19 physician would be taking his call shift. I
20 joking said if he didn't pass along that I was
21 the CRNA on call, then the following doctor would
22 not be able to call me in."

23 Did I read that correctly?

24 A. Yes.

25 Q. Did she say that "I jokingly said" or "joking

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1 **said"?**

2 A. Yes.

3 Q. Does it sound like somebody who's scared to death
4 to say anything if she's joking with him?

5 MS. ASHER: Objection.

6 A. She's in an office behind a closed door with him.
7 She may have made a joke to try to get out.

8 Q. That's pure speculation on your part, isn't it?

9 MS. ASHER: Objection. Go ahead.

10 A. Yes.

11 Q. "Dr. Lisan's response was, 'How much is it worth
12 to you?'"

13 Okay. Is that an egregious inappropriate
14 remark?

15 A. It's inappropriate.

16 Q. Let me ask you this: Do you see that as a sexual
17 implication?

18 A. Potentially.

19 Q. You do?

20 A. Yes.

21 Q. Is it conceivable to you that it might have been
22 a phrase he used a lot of times referring to
23 getting coffee or getting food or things having
24 nothing to do with sex or things that are
25 innocuous? Did that ever occur to you?

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1 A. It could be, too.

2 Q. But you don't know the answer to that, do you?

3 A. That's why I said it was potential.

4 Q. A what?

5 A. You asked me first and I said potentially.

6 Q. Potentially, okay. It would be helpful to know
7 what Dr. Lisan said about it?

8 MS. ASHER: Objection. Go ahead.

9 A. Dr. Lisan had the opportunity in the oral reply
10 to tell Dr. Altose. He had these. He could have
11 responded during the oral reply.

12 Q. And you're saying because it wasn't in the notes,
13 he didn't say it? Correct? Is that right?

14 A. I used what I had in the evidence folder, yes.

15 Q. Okay. "I basically walked away at this point and
16 let his office door close behind me. This is not
17 the first time unsolicited inappropriate sexual
18 comments, jokes have been made to me by
19 Dr. Lisan."

20 But she never complained before about any of
21 them to even a manager; is that correct?

22 A. Yes.

23 Q. Okay. So she must not have taken them so
24 gravely, did she?

25 MS. ASHER: Objection. Go ahead.

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1 A. I can't comment.

2 Q. No, that you won't speculate about, will you?

3 MS. ASHER: Objection.

4 Q. You don't want to speculate about the fact that
5 obviously they weren't that grave and egregious
6 to her, she never said anything to anybody about
7 it. You don't want to speculate about that, do
8 you?

9 MS. ASHER: Objection. Go ahead.

10 A. What I'd like to say is that, you know, in this
11 country right now there are women that are coming
12 forward with things that happened decades ago.

13 Q. Okay. So he, Dr. Lisan should be a victim of
14 your assessment of the political situation in the
15 whole country?

16 A. Absolutely not.

17 Q. Did the whole country get rid of due process of
18 law?

19 MS. ASHER: Objection.

20 A. Absolutely not.

21 Q. Did the whole country get rid of fairness towards
22 people that are subjects of accusations?

23 MS. ASHER: Objection.

24 A. Absolutely not.

25 Q. Do you think everybody agrees with the MeToo

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1 movement? Including women? Do you think all
2 women agree with that?

3 MS. ASHER: Objection.

4 A. No.

5 Q. "I just feel I need to come forward at this time
6 because the current situation has made me feel
7 extremely uncomfortable to be at work."

8 Okay. So that's her statement, right?

9 A. Yes.

10 Q. And this is what you call in the middle
11 egregiousness, not light and not heavy but sort
12 of in the middle?

MS. ASHER: Objection. Go ahead.

14 Q. That's what you call this?

15 A. I had in the evidence file numerous issues. I
16 took them all into account.

17 Q. Okay. But you characterized this one as being in
18 the middle?

19 A Yes

20 Q. All right. What's the highest? Rape?

21 MS. ASHER: Objection.

22 Q. Is that the worst?

23 MS. ASHER: Objection.

Q. Physical assault?

MS. ASHER: Objection. Steve,

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1 that's not a proper question. You know
2 that.

3 MR. SINDELL: No, I don't. I
4 think it's a perfectly proper question and
5 I'd like to know what she thinks the
6 extreme end is.

7 A. The worst would be murder.

8 Q. Oh, okay. I'd like you to take a look at the
9 Costanzo one that's this page here. It's double
10 spaced so it's easy to see. Okay?

11 Now I'm sure you're going to tell me that
12 it's inappropriate to describe, for a man to
13 describe his male genitalia, correct?

14 A. Yes.

15 Q. Is it always inappropriate?

16 A. In the workplace, most likely.

17 Q. Most likely but it doesn't have to be, depending
18 on the relationship between the two people?

19 A. Depending on the relationship.

20 Q. It always depends on that, doesn't it? Correct?

21 A. Yes.

22 Q. Now, when did this occur?

23 A. In early 2015, some time ago.

24 Q. So that would have been two years earlier, right?

25 A. Yes.

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1 Q. Did you know that Elaine Costanzo testified that
2 if she had any idea as to how her complaint was
3 going to be used, she never would have made it in
4 the first place?

5 MS. ASHER: Objection.

6 Mischaracterization.

7 Q. Did you know she testified to that?

8 Do you want me to read it?

9 A. I believe you.

10 Q. Do you really want me to do that?

11 MS. ASHER: I believe it's out of
12 context. Look. I'm just placing an
13 objection on the record. She can answer.

14 A. I believe you already did read that to me.

15 Q. No, I didn't read that, I don't believe. I read
16 the other section.

17 A. Maybe I read it while you were reading the other
18 section.

19 Q. Maybe you did.

20 Okay. Well let's try -- I don't think I have
21 it down here. Let's try not to get it mixed up
22 because I can't know what you read to yourself.

23 A. Right.

24 Q. But she did object, didn't she? She told him she
25 didn't like it?

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1 A. Yes.

2 Q. And he stopped; is that correct? That's what
3 Bruce Kafer found?

4 A. Was that this incident --

5 Q. Yes.

6 A. -- in 2015 or was it the incident that she
7 complained of in 2017?

8 Q. She didn't complain in 2017.

9 A. Wasn't she the one that complained in March?

10 Q. No.

11 A. Elaine wasn't?

12 Q. She only made this complaint, yes.

13 MS. ASHER: Just focus on the
14 question he's asking you and the document
15 in front you right now.

16 Q. You can take a look. I mean go ahead.

17 A. "On Tuesday March 7th, Ms. Elaine Costanzo..."

18 Q. Yes, this is it.

19 A. "Called on her personal telephone work hours"?

20 Q. Oh, that. I thought you meant it was a -- okay.

21 A. That was the one I was referring to. I'm sorry.

22 Q. Okay. Don't you think that the length of time
23 that went by makes this kind of complaint rather
24 stale?

25 A. Yes, but there was a more recent one from March

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1 of 2017 which this --

2 **Q. A sexual one?**

3 A. One of feeling uncomfortable being called at
4 home.

5 **Q. Oh, well, you don't know what Ron's take -- Ron**
6 **Lisan's take on that is either, his side of it,**
7 **do you?**

8 MS. ASHER: Objection. Go ahead.

9 A. He didn't present it in his oral reply.

10 **Q. Did he present it in the reinvestigation that**
11 **needed to be conducted?**

12 A. He may have.

13 **Q. Do you have any idea what he said?**

14 A. I do not.

15 **Q. And you don't think you needed to wait for that**
16 **reinvestigation to occur?**

17 MS. ASHER: Objection. Asked and
18 answered.

19 **Q. Is that correct?**

20 A. I answered it, "Incorrect. I did not."

21 **Q. Now let's take a look at Rhonda Verb. That's the**
22 **one right before.**

23 Oh, by the way, I meant to ask you how
24 egregious did you consider Elaine Costanzo's
25 report that we just read? Where is that? Is

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1 **that in the middle, on the low end, on the high**
2 **end?**

3 A. So as we discussed, it was old.

4 Q. **What?**

5 A. As we discussed, it was old in date. It was from
6 prior time, so, and I did take into the fact that
7 she had told him to not do it and so he had been
8 warned by a woman in the area that his comments
9 were not welcome.

10 Q. **And did you take into account that he stopped**
11 **making the comments after he was told?**

12 A. For a period of time and then in January there
13 were new reports of contact and he was asked and
14 then he...

15 Q. **You mean calling her at home is some kind of**
16 **statement to her that made her uncomfortable? Or**
17 **just being called at home? I mean is that in the**
18 **same category as talking about your genitalia?**

19 A. No. But he called her at home and said she
20 needed to find her own coverage because he
21 couldn't work with her because she wouldn't say
22 hello to him and greet him. I'm not saying that
23 that is sexual and he wasn't charged in the
24 proposed action or the sustained action for
25 sexual misconduct but failure to --

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1 Q. Calling her at home was some kind of violation in
2 this circumstance? Is that what you're saying?

3 MS. ASHER: Objection. Go ahead.

4 A. I think it was inappropriate for him to call her
5 at home and tell her she needed to find a
6 replacement to work with him.

7 Q. Do you understand that there was a conversation
8 that preceded that?

9 MS. ASHER: Objection.

10 Q. Between her and him? Did you know that?

11 MS. ASHER: Objection. Go ahead.

12 A. I know what was in the evidence file.

13 Q. Was that in the evidence file?

14 A. No.

15 Q. Are you sure?

16 A. No.

17 Q. Are you sure -- withdrawn.

18 Did you know that she brought up to him that
19 they shouldn't be placed together in the same
20 operating room because she felt uncomfortable and
21 then he called her at home to tell her she should
22 get somebody else if that's how she felt? Did
23 you know that?

24 MS. ASHER: Objection. Go ahead.

25 A. He could have made it very clear in his oral

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1 reply.

2 Q. Did you know that?

3 A. I did not know it and if he had an issue, he
4 could have gone to Dr. Raphaely rather than
5 called her at home.

6 Q. And you could have waited until the full
7 investigation was complete, couldn't you have?

8 MS. ASHER: Objection. Go ahead.

9 Q. And answer my question.

10 A. Yes. The investigation from Bruce Kafer
11 acknowledged that the allegations did not rise to
12 a sexual nature.

13 The issue for the action was not based on
14 sexual issues. It was based on inappropriate
15 conduct by Dr. Lisan.

16 Q. I don't -- will you answer my question?

17 MS. ASHER: She did.

18 Q. You could have, you could have taken into account
19 that the investigation that was taking place
20 could have been completed before any final
21 judgment was made, couldn't you?

22 MS. ASHER: Objection. Asked and
23 answered. Go ahead.

24 Q. Couldn't you?

25 A. I could have.

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1 Q. Thank you. That's the question I asked.

2 MS. ASHER: Can we just take a
3 minute off the record?

4 MR. SINDELL: Yes.
5 - - - -
6 (Thereupon, a discussion was had off the
7 record.)
8 - - - -
9 Q. Karin Bonfili, that's 34. It's the one that the
10 Number 34 on it. All right?
11 Okay. It says, "On Friday, January 6th I was
12 assigned to work with Dr. Lisan for the day."
13 Let's see here. Okay. I'd like you to --
14 excuse me.
15 Did you have -- this was part of the evidence
16 file, wasn't it? All these different statements
17 we're going over?
18 A. Yes.
19 Q. Okay. I want to, I just noticed something
20 myself.
21 It says, "On Friday, January 6th, I was" --
22 this is Karin Bonfili, right?
23 A. Yes.
24 Q. "I was assigned to work with Dr. Lisan for the
25 day."

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1 And then it talks about what he said and so
2 forth, but that's the date, January 6th, right?

3 A. Yes.

4 Q. Okay. Interestingly enough, it was the same date
5 that Karin Bonfili -- excuse me. Withdrawn.

6 It was, January 6th was the same date that we
7 emailed the letter to you?

8 A. Right.

9 Q. Right? Isn't that correct? The complaint letter
10 from, about Dr. Raphaely?

11 A. Yes.

12 Q. So it says, "On Friday, January 6th I was
13 assigned to work with Dr. Lisan" and then it goes
14 through a whole series of making a better offer
15 and so on and so forth, right?

16 A. Yes.

17 Q. Just to identify, but if you take a look at,
18 which one is the proposed suspension?

19 A. That's Exhibit 80.

20 Q. 80, okay. Please take a look at Page 2 and look
21 under B.

22 A. Yes.

23 Q. In Exhibit 34, one of the quotes in here is that
24 he said, "unless you can make me a better offer."
25 Do you see that? On Exhibit 34?

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1 A. Yes.

2 Q. And if you look at B, it says, "unless you can
3 make me a better offer," right?

4 A. Yes.

5 Q. But the date is on Friday, January 6th, 2017 in
6 the report of contact?

7 MS. ASHER: Objection.

8 Q. Isn't it?

9 MR. SINDELL: What's the
10 objection?

11 MS. ASHER: That's not actually,
12 it's not -- if you keep reading...

13 A. Read the second or third sentence.

14 Q. "On Friday, January 6th, 2017 I was assigned to
15 work with Dr. Lisan for the day. Throughout the
16 day he continued to make sexually oriented
17 comments. For example, in the morning... about
18 bed. I reviewed everything... response...
19 unless you make me a better offer."

20 MS. ASHER: You skipped something.

21 MR. SINDELL: What did I skip?

22 MS. ASHER: The second example.

23 "On Thursday, January 5th I was trying to
24 discuss a case"...

25 MR. SINDELL: Oh, okay. You're

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1 right. So the dates, you're absolutely
2 right. Thank you.

3 BY MR. SINDELL:

4 Q. Okay. Let's go through it.

5 "I was assigned to work with Dr. Lisan for
6 the day. Throughout the day Dr. Lisan continued
7 to make sexually oriented comments."

8 She doesn't specify, does she?

9 A. No.

10 Q. So you don't know what they are, do you?

11 A. No.

12 Q. Do you have some speculation about what they
13 were?

14 MS. ASHER: Objection.

15 A. No.

16 Q. Okay. "For example, in the morning I stated that
17 I was tired and wanted to go home and get back in
18 my bed. His response was something about 'Sounds
19 good to me. We can go now and get in your bed.' "

20 Do you believe that that's what he said?

21 A. I do.

22 Q. Okay. Because she said so?

23 A. Because she reported it, yes.

24 Q. Yes. That's the only reason you have?

25 A. Yes.

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1 Q. Okay. But you don't know what he told the
2 reinvestigation that you didn't wait for; is that
3 correct?

4 MS. ASHER: Objection.

5 A. Yes.

6 Q. Second example. "On Thursday, January 5th, 2017
7 I was trying to discuss the case that I was going
8 to do with him on Friday, January 6th. I
9 reviewed everything I know about this patient
10 with him and said, 'So are you leaving now?' And
11 his response was, 'Unless you can make me a
12 better offer.'"

13 Did you see that as a sexual -- assuming it's
14 true, is that sexual?

15 A. Not necessarily, no.

16 Q. Was it offensive?

17 A. It wouldn't be to me but it was important to her
18 to put on the report of contact.

19 Q. So that makes him guilty, right?

20 A. No.

21 Q. "A few weeks prior I had asked, 'Do you have
22 someone coming to relieve me to go home?' His
23 response: 'If I get you out, what are you going
24 to do for me?'"

25 Did you consider that sexual?

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1 A. Could or could not be.

2 Q. Okay. Is it inappropriate?

3 A. Could or could not be.

4 Q. Sounds like you think it's fairly mild?

5 A. Yes.

6 Q. "When I was reviewing the case with Dr. Lisan on
7 Thursday, January 5th another OR staff member
8 happened to be present after Dr. Lisan spoke with
9 sexual undertones to me."

10 We don't know what they were, do we?

11 A. No.

12 Q. Do you have any speculation about it?

13 MS. ASHER: Objection.

14 A. No.

15 Q. "And though in sexual comments he walked away
16 when we were done discussing the case."

17 Did I miss something here?

18 "After Dr. Lisan spoke with sexual undertones
19 to me and though in sexual comments, he walked
20 away when we were discussing the case. The other
21 OR staff member that was present asked me if I
22 felt uncomfortable because he felt uncomfortable
23 for me hearing how he spoke to me."

24 It doesn't mention the name, does it, of the
25 other OR staff member, correct?

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1 A. Correct.

2 Q. Do you happen to know the name?

3 A. I do not.

4 Q. "Although I cannot write this in quotes verbatim
5 because I'm trying to account for what has been
6 occurring the last several weeks, I can tell you
7 that I am not comfortable with this type of
8 sexual talk at work."

9 Do you see anything in this thus far that
10 would prevent her from telling Dr. Lisan that she
11 didn't appreciate his comments or innuendoes?

12 MS. ASHER: Objection. Go ahead.

13 Q. Anything that prevented her from doing that?

14 A. She could have.

15 Q. According to Mr. Kafer, that was recommended by
16 the policy of the VA, right?

17 A. And the other staff member could have said
18 something, too.

19 Q. Uh-huh, but you didn't answer my question.

20 A. I did. I did. I thought I did. I agree.

21 Q. "And the other staff member could have said
22 something, too?"

23 A. If the other --

24 Q. That's an answer to my question?

25 A. I thought I answered and then said something

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1 else.

2 Q. Well, let's take my question.

3 Was there anything that prevented her --

4 A. No.

5 Q. -- from saying I didn't appreciate it at the
6 time?

7 A. No.

8 Q. And that's contrary to the recommended policy of
9 the VA that Mr. Kafer cited in his report,
10 correct?

11 A. Yes.

12 Q. Okay. "Although Dr. Lisan has always made
13 sexually oriented jokes, recently I feel that the
14 level of the sexual talk has escalated and I feel
15 extremely uncomfortable. I have not said
16 anything in response because I'm so uncomfortable
17 and uneasy when it is happening."

18 Do you believe that, that she's so
19 uncomfortable when he makes these jokes or
20 remarks?

21 A. Yes.

22 Q. You thought they were kind of mild, didn't you?

23 MS. ASHER: Objection. Go ahead.

24 A. But I could see where she would be uncomfortable.

25 Q. Well, you, yeah, I understand that but they're

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1 **not even sexual, really, are they?**

2 MS. ASHER: Objection. Go ahead.

3 A. She didn't really go into the depth of what they
4 were.

5 Q. **Well, she says sexually oriented?**

6 A. Right.

7 Q. **Do you think they were?**

8 A. I have no reason to not believe her.

9 Q. **Well, I asked you if they were sexual and you
10 said maybe/maybe not?**

11 A. Well, she's describing them as sexual talk at
12 work.

13 Q. **So she talks, she describes it as sexual, that
14 means that he violated something because she
15 heard it that way?**

16 MS. ASHER: Objection.

17 Q. **Right? Isn't that what you're saying?**

18 A. No, that's not what I said. I said I have no
19 reason to doubt what she put in her report of
20 contact.

21 Q. **Okay. "I don't know how to respond."**

22 **Do you believe that? "I don't know how to
23 respond"?**

24 MS. ASHER: Objection. Go ahead.

25 A. I do.

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1 Q. You believe that she didn't know how to respond?

2 A. Yes.

3 Q. "And frequently I am caught off guard when he
4 says it. I do not want to come to work feeling
5 uncomfortable in the workplace because we work
6 together in a," quote, "team," quote, "care
7 setting. I just want to work in a respectable
8 and professional environment and not feel uneasy
9 while being at work."

10 Okay. Well, if she feels that way, why
11 didn't she just tell him?

12 A. I can't answer for her.

13 Q. Could he -- oh, I don't want to -- okay. Well,
14 this is also mentioned in your report.

15 Now, the gag order, and I call it that, which
16 is meaning the checklist and statement not to
17 bring up the allegations to the CRNAs who made
18 complaints in the direction of Dr. Raphaely to
19 Mr. -- to Dr. Kafer, I mean. Gees.

20 A. Mr. Kafer.

21 Q. To Dr. Lisan. Should I start that again?

22 A. Please.

23 MS. ASHER: Sounds like you need
24 the day to be over, too.

25 Q. That is correct.

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1 The order that Dr. Raphaely issued to
2 Dr. Lisan not to discuss the allegations of the
3 CRNAs with any of the complaining CRNAs -- so are
4 we on the same page here about what I'm talking
5 about?

6 A. Yes.

7 Q. Yes?

8 A. Yes.

9 Q. Okay. So I'm going to call that the gag order
10 preventing him from talking about it to the
11 CRNAs?

12 MS. ASHER: Objection.

13 Characterization. Go ahead.

14 Q. That's my characterization. Okay?

15 A. I would like, could we just call it the letter
16 to, the letter of instruction.

17 Q. That's a little long. Why don't we just call it
18 the -- you're looking for something neutral.

19 The non-discussion order?

20 A. Okay.

21 Q. Okay. The non-discussion order regarding the
22 allegations made by the sexual, by the CRNAs who
23 complained. Okay?

24 That kind of order occurs when there is an
25 allegation of sexual harassment, it's called a

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1 sexual harassment checklist, isn't it?

2 A. Yes.

3 Q. Okay. But wouldn't you agree with me that for
4 something that is pretty clearly not sexual
5 harassment, there wouldn't be any need for such a
6 do not discuss order like that with that
7 checklist? Wouldn't you agree with that?

8 MS. ASHER: Objection. Go ahead.

9 A. It's the policy, you know. I'm sorry, it is the
10 policy I believe. I think. It's, the checklist
11 is part of the policy.

12 Q. For what?

13 A. Allegations.

14 Q. Of?

15 A. Potential or alleged sexual harassment.

16 Q. No. It doesn't say potential?

17 A. Or alleged.

18 MS. ASHER: It does say alleged.

19 A. I think it --

20 Q. Yes, but --

21 A. -- says alleged.

22 Q. I don't think it says anything like any of that;
23 but let's, maybe you're right. Let's take a
24 look.

25 Let's see if I have the checklist here.

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1 **Alleged harasser. It doesn't say alleged --**
2 **it says sexual harassment allegation checklist,**
3 **you're right. I would say that means alleged.**

4 A. Okay.

5 Q. And that's Exhibit 33, by the way, you see it
6 there?

7 A. I'm there.

8 Q. Okay. Wouldn't you agree with me that it's quite
9 a stretch to characterize any of these complaints
10 as an allegation of sexual harassment? Don't you
11 think that's quite a stretch?

12 MS. ASHER: Objection. Go ahead.

13 A. I don't consider it a stretch.

14 Q. Really? All right. If the alleged victim does
15 not register any complaint or objection to the
16 unwelcome remarks, don't you think that that
17 tends to reduce the likelihood that it's
18 harassment of any kind?

19 MS. ASHER: Objection. Go ahead.

20 A. No.

21 Q. No?

22 A. No. We care for lots of veterans of military
23 sexual trauma and many of them have not so raised
24 issues. These women went to their supervisor and
25 the supervisor spoke on their behalf.

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1 Q. That kind of sexual trauma is not based upon
2 little innuendos that are made by somebody in
3 passing remarks or even direct remarks. That's
4 not the kind of sexual trauma that you're talking
5 about here, is it?

6 MS. ASHER: Objection. Go ahead.

7 A. It could be.

8 Q. But it isn't?

9 MS. ASHER: Objection. Go ahead.

10 A. It was harassment or can be construed as unwanted
11 and unwelcomed.

12 Q. It may be unwanted and unwelcomed, that doesn't
13 make it harassment at all.

14 MS. ASHER: Objection. Go ahead.

15 Q. It may make it something that needs to be
16 commented upon or objected to but it doesn't mean
17 it's harassment in some serious vein that
18 requires don't talk to anybody about it or any of
19 these people about it. I mean it's something
20 that's very simple to resolve.

21 MS. ASHER: Objection. Is there a
22 question?

23 Q. Isn't it?

24 MS. ASHER: Objection. Go ahead.

25 A. I don't understand the question. Go ahead.

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1 Q. Isn't it something pretty easy to resolve, all
2 these little remarks and innuendos that are
3 suddenly the basis of reports of contact? Don't
4 you think that they're fairly minor things that
5 could be easily discussed and disposed of?

6 MS. ASHER: Objection. Go ahead.

7 A. Yes, if the events of March 7th and March 8th had
8 not occurred.

9 Q. Would you agree with me that sexual harassment is
10 a very serious thing?

11 A. Yes.

12 Q. And it shouldn't be tolerated, should it?

13 A. No.

14 Q. And somebody who engages in serious sexual
15 harassment should be seriously disciplined
16 including possible termination?

17 A. Yes.

18 Q. Is that right? Okay.

19 And being as serious as I think we can all
20 agree real sexual harassment is, don't you think
21 that it is very dangerous to trivialize sexual
22 harassment by claiming it for trivial passing
23 remarks that could easily be expressed as
24 unwelcome by any woman who receives them?

25 MS. ASHER: Objection. Go ahead.

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1 A. Can you read -- can somebody repeat it? I'm
2 sorry.

3 Q. I'll repeat the question.

4 Don't you think that making trivial
5 complaints of exaggerated sexual harassment
6 diminishes the seriousness of real sexual
7 harassment?

8 A. No.

9 Q. Don't you think that the, what you're, since
10 you've mentioned it repeatedly, this new MeToo
11 era, don't you think this new MeToo era runs the
12 risk if it's not tempered with reality of causing
13 trivialization of sexual harassment that degrades
14 the seriousness of it?

15 MS. ASHER: Objection.

16 A. No.

17 Q. You think it's helpful for every little slight
18 that may have some sexual innuendo that could
19 easily be responded to should be blown up into a
20 10-day suspension or consequences of that nature
21 such as for some people if it's a housekeeper
22 fire them?

23 MS. ASHER: Objection.

24 Q. Don't you think there's something wrong with
25 that?

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- 1 MS. ASHER: Objection
- 2 mischaracterization. Go ahead.
- 3 A. No. And Dr. Lisan went into an OR that he had no
- 4 professional business --
- 5 Q. **How do you know he had no professional business?**
- 6 A. Because it stated so.
- 7 Q. **Who stated it?**
- 8 A. The CRNA, the other.
- 9 Q. **Anybody else?**
- 10 A. The other anesthesiologist that asked him to
- 11 leave.
- 12 Q. **Which one?**
- 13 A. And the other anesthesiologist, we'll have to
- 14 look at the police report, and the other
- 15 anesthesiologist that went in to relieve the CRNA
- 16 because everyone was uncomfortable.
- 17 Q. **Let me suggest this to you: That people walk**
- 18 **into OR operations all the time one or the other**
- 19 **OR room including anesthesiologists and CRNAs and**
- 20 **communicate chitchat from time to time.**
- 21 **Would that surprise you?**
- 22 MS. ASHER: Objection. Go ahead.
- 23 A. If they were instructed by their supervisor not
- 24 to do that and if they placed hands on somebody.
- 25 Q. **Okay. Let's talk about "placed hands on**

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1 **somebody." What hand was placed on what part of**
2 **somebody? Do you know?**

3 A. He touched her shoulders.

4 Q. **He touched her shoulder.**

5 **Is that what he did? Put his hand on her**
6 **shoulder?**

7 MS. ASHER: Objection.

8 Q. **Is that right?**

9 A. That's what the police report says.

10 Q. Uh-huh.

11 **Did he put his hand on her shoulder leaning**
12 **down?**

13 A. Oh, my.

14 Q. **Toward her breast?**

15 MS. ASHER: Objection.

16 MR. SINDELL: Why is it
17 objectionable?

18 MS. ASHER: It's an inappropriate
19 question.

20 MR. SINDELL: I want to know what
21 the touching was, what she thought the
22 touching was.

23 MS. ASHER: And as the witness
24 said, it's in the police report which you
25 have.

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1 MR. SINDELL: You think it's
2 objectionable to ask her what she
3 understands the touching was?

4 MS. ASHER: When it's already
5 answered, yes, I do think it's
6 objectionable.

7 MR. SINDELL: Well, when it's
8 answered. That's not what you said. You
9 said it's an objectionable question. No,
10 it isn't.

11 MS. ASHER: Steve, don't raise
12 your voice at me.

13 **Q. All right. Let me ask you again: Do you know
14 what part of her back or shoulder he touched?**

15 A. Just per the police report her shoulders.

16 **Q. Do you interpret that as being the front of her
17 body?**

18 A. No.

19 **Q. Do you think that if you touch somebody's
20 shoulder, that that's a call to go to the police?**

21 MS. ASHER: Objection. Go ahead.

22 **Q. Was that a police action matter?**

23 MS. ASHER: Same objection. Go
24 ahead.

25 **Q. "He touched my shoulder"?**

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1 MS. ASHER: Objection. Go ahead.

2 A. He was instructed not to have contact with her.

3 Q. Okay. Is that a violation of law, an assault in
4 your mind, to touch somebody's shoulder?

5 MS. ASHER: Objection.

6 A. It's failure to follow the order.

7 Q. Do you think that it's a matter that requires
8 police intervention, that he touched her
9 shoulder?

10 MS. ASHER: Objection.

11 A. Every employee is entitled to bring any issue of
12 concern they have to the police or anyone else.

13 If she was afraid, she was certainly entitled
14 to go to the police.

15 Q. Do you believe that she was afraid when he
16 touched her shoulder?

17 A. Yes, I do.

18 Q. Do you know that he asked her if it was
19 permissible to touch her shoulder first?

20 MS. ASHER: Objection.

21 A. It was not in the police report.

22 Q. And of course since it wasn't in the notes that
23 you read that nobody else saw from our side of
24 the fence, you assume he didn't mention it to
25 Dr. Altose, correct?

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1 MS. ASHER: Objection. Go ahead.

2 A. Yes.

3 Q. And you have any idea what mention was made of it
4 to Leshelle Reece, correct?

5 MS. ASHER: Objection.

6 A. Correct.

7 Q. As part of the investigation?

8 A. Correct.

9 Q. But you consider that a cause for concern because
10 he was ordered not to talk to her so he shouldn't
11 have touched her shoulder?

12 A. Correct.

13 Q. He wasn't ordered not to talk to her at all, was
14 he?

15 MS. ASHER: Objection.

16 A. Correct.

17 Q. Okay. He was ordered -- he could talk to her
18 about anything to do with business matters?

19 A. Correct.

20 Q. You consider that a serious -- withdrawn.

21 It sounds like you considered that a very
22 serious breach that he didn't follow the order;
23 is that right?

24 A. Yes.

25 Q. Well, if he was talking to her about a business

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1 matter and touched her shoulder, would that be a
2 different consequence on your part?

3 MS. ASHER: Objection.

4 Q. Withdrawn.

5 Would you view it differently if it was a
6 legitimate conversation but he touched her
7 shoulder?

8 A. Based on the series of events that had happened
9 over the previous couple months, he should not
10 have touched her period.

11 Q. What happened over a couple of months other than
12 a bunch of CRNAs were solicited or maybe
13 initiated in some cases a complaint about him
14 which didn't constitute sexual harassment?

15 A. But was unwanted and was not tolerated and it was
16 a bunch. It wasn't just one. It wasn't two. It
17 wasn't three. It was several with several
18 instances where it was unwanted and we do have a
19 policy that we cannot condone unwelcome harassing
20 conduct and that we will take action, and that's
21 what we did.

22 Q. What's the person -- I'm sorry, go ahead.

23 A. I'm done.

24 MS. ASHER: We're about a
25 half-hour past where you said you were

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1 going to wrap up, so are we close to
2 wrapping up now?

3 MR. SINDELL: Yes. We're close to
4 wrapping up. I think I don't have anything
5 more.

6 BY MR. SINDELL:

7 **Q. Is there anything that you read or heard that**
8 **Dr. Raphaely said that you don't believe?**

9 MS. ASHER: Objection. Vague. Go
10 ahead.

11 **Q. In connection with Ronald Lisan?**

12 A. There was, you know, one small report of contact
13 from Dr. Raphaely. I placed most of my weight
14 based on the reports of contact from the CRNAs
15 and the police report.

16 **Q. Is there anything that any of the CRNAs presented**
17 **in writing that you read or statements they made**
18 **or statements you heard which you didn't believe?**

19 A. No.

20 **Q. You believed every single thing that every CRNA**
21 **reported a hundred percent?**

22 A. Yes. I have no reason to doubt that they would
23 have said something different or had a reason to
24 say something different.

25 MR. SINDELL: No further

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1 questions.

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2 MS. ASHER: And, Sue, as we
3 discussed, you have the right to read the
4 transcript of your deposition if it's
5 ordered. You have the right to waive that
6 right, but I usually recommend that you
7 choose to read.

8 THE WITNESS: I will.

9 - - - -

10 (Deposition concluded.)

11 - - - -

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3 SIGNATURE PAGE

4

5

6 I, SUSAN M. FUEHRER, having read
7 the foregoing deposition, do hereby certify said
8 testimony is a true and accurate transcript;

9

10 _____ I submit no changes.

11

12 _____ I submit the following changes on
13 the _____ errata sheet(s) attached hereto
and made a part hereof.

14

15

16 SUSAN M. FUEHRER

17

18 DATE SIGNED

19

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2

3 C E R T I F I C A T E

4

5 The State of Ohio,) SS:
6 County of Cuyahoga.)

7

8 I, Pamela S. Greenfield, a Notary Public
9 within and for the State of Ohio, authorized to
10 administer oaths and to take and certify
11 depositions, do hereby certify that the
12 above-named witness was by me, before the giving
13 of their deposition, first duly sworn to testify
14 the truth, the whole truth, and nothing but the
15 truth; that the deposition as above-set forth was
16 reduced to writing by me by means of stenotypy,
17 and was later transcribed into typewriting under
my direction; that this is a true record of the
testimony given by the witness; that said
deposition was taken at the aforementioned time,
date and place, pursuant to notice or
stipulations of counsel; that I am not a relative
or employee or attorney of any of the parties, or
a relative or employee of such attorney or
financially interested in this action; that I am
not, nor is the court reporting firm with which I
am affiliated, under a contract as defined in
Civil Rule 28(D).

18

19 IN WITNESS WHEREOF, I have hereunto set my
hand and seal of office, at Cleveland, Ohio, this
7th of May, 2019.

20

21

22 _____
Pamela S. Greenfield, CRR, RDR
Notary Public, State of Ohio
My commission expires July 2, 2023

23

24

25



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1 DO NOT WRITE IN TRANSCRIPT EXCEPT TO SIGN.
2 Please note any word changes/corrections on this
sheet only. Thank you.

3 Page/Line Correction

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